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[7317] Mr. Bauman: Judge, I am not going to quibble about the time, but I do want to address a moment or two in the way of argument to the Court with relation to the situation in which I am placed.

The Court: Would you be more comfortable sitting down?

Mr. Bauman: I think I would be more comfortable standing up.

The Court: Oh, all right, whichever is better for you.

Mr. Bauman: Thank you, sir.

The statement to which Mr. Kiendl called your attention yesterday when read in context occurred in connection with an argument relating to the introduction, as I remember it, of a certain tax return, and in that particular point wherein I [7318] made the statements which are recorded in the minutes and where Mr. Tyler made the statements which are recorded in the minutes we were talking about the admissibility of that exhibit with relation to the first three counts. And it was in that background—indeed you might say the first four counts because the problem is exactly the same although I think your Honor was specifically questioning me with regard to the first three counts.

It was against that background, sir, where when I was asked—and I don't have the exact language before me—(handed by Mr. Tyler)—I do now—th question, or at least Mr. Tyler was asked by the Court:

"Are you urging that that money was Klein's money? And that Koerner aided him and abetted him by secreting through an agent, Alprin, $260,000-odd that was Klein's money that Klein should have reported in the year 1944, 1945, 1946?"

And Mr. Tyler said:

"Well, it doesn't quite boil down that way."

[7319] And your Honor and Mr. Tyler engaged in some discussion and at about that point I said:

"Let's say, as Mr. Tyler has already said, the Government does not contend that this $264,000 was the property of Klein at the time it was up in Canada in Alprin's possession and the Government contends unequivocally that it was——"

And then your Honor said:

"Well, now, just a moment" and from there went on. And what I was saying, and I think what Mr. Tyler was saying, was that we had furnished a bill of particulars.

The indictment in the first three counts charge Klein with evading a certain amount of income taxes.

The bill of particulars set forth the source of that money. And in relation to the first three counts I was saying to the Court:

"I cannot now contend that this $800,000 was a part of that income which Klein should have reported on March 1948 when he was talking about his 1944, 1945 and 1946 income."

Now, that, sir, is the context against which this statement of mine I respectfully submit [7320] must be read. And I would still say to your Honor that for that purpose I cannot now contend, I cannot and do not now contend that when Klein filed his 1947 return in 1948 that there should have been included this $800,000 because it is not so charged in the first three counts of the indictment and indeed in the fourth count of the indictment, the conspiracy count, it is not set forth in so far as the amount of money Klein is supposed to have evaded the taxes on.

Now that is the background and that was the posture at the time we engaged in this discussion which is now called to the Court's attention.

I say, sir, that is not a representation.

[7321] The Court: I know, but, Mr. Bauman, we are all past that.

Mr. Bauman: I thought you——

The Court: You just rehashed it.

I indicated yesterday that I would not accede to the defendants' demand that I include as a stipulation in instructions to the jury this concession. I didn't come to that conclusion on the basis that you recounted today and I consider that additional valid basis for my ruling. I came to it on the very simple basis that it was not a stipulation of a fact. Who

owns something is a conclusion of law. And that was the very fundamental and generic reason why I refused to accede to that request.

However, the defendants pointed out that they had been laboring under the assumption that that was a concession even of theory and that because of the fact that you would have the opportunity of summation last for the Government, that they thought in all fairness, so that they could properly frame their defense and their summations, and as appears now from Commissioner Donohue's statement his opening, that they wanted an indication from you in just simple fairness whether you intended to assert now regardless of what you might might have asserted [7322] before, which I have refused to instruct the jury with a stipulation—whether you intended henceforth to assert that any part of those three drafts was Klein's money. And in fairness I felt they were entitled to that to enable them to properly frame their defense and their summation, which precedes yours.

And I also said in view of the fact that you made a commitment that you would so urge and they summed up on that basis and then you summed up afterwards and didn't you would have imposed upon them the unenviable obligation of having opened up what to them is a sore area in the eyes of the jury, and you have made no reference thereto. For that reason I said to you whatever commitment you made, if you said yes you intend to urge it, I intended to see that you adhered to it. And I gave you 24

hours to think over only that one simple thing—are you going to urge it or are you not?

Mr. Bauman: When you say, your Honor, whose money it is, and I shall try to answer you directly as I tried to do over the past three and a half months, you were asking for what I think is a conclusion, and I will be very happy to give you my conclusion, and I respectfully submit that this is no about-face as Mr. [7323] Kiendl said yesterday for the Government, and this does not take Mr. Kiendl or the defense counsel by surprise, because they have lived with these facts now at least in the three and a half months of this trial, that the Government will certainly argue and will argue that this money was under Klein's control while it was in Canada, and to that extent, sir, I suggest that I am not in any way about facing or saying anything but what I have a right to say.

The Court: Well, I am not concerned about the characterization of your attitude. I don't think it is an about-face either. I am in complete accord with you. But that is not important. When you say that the Government intends to urge that this was under Klein's control and I——

Mr. Bender: In Canada. He said in Canada.

The Court: Excuse me. Will you read back Mr. Bauman's statement, his last statement before I said I am not concerned about the characterization.

(Record read.)

The Court: I see.

Mr. Bauman: Well, I misspoke myself. I am talking about these two checks for $264,000 and one [7324] for $272,000, whether it was in Canada, whether it was in Brooklyn, or any other place.

The Court: Well let me put it to you this way: One set of defendants says that these checks were liquidating dividends in what they claim to have purchased either in Tivoli or in the corporations in the Harwood deal. The other defendant says "Nothing doing. It was no liquidating dividend. It was a bonus, and merely a gift for a job well done in Harwood's," that it was not in specific commissions or royalties or anything earned, but it was just out of the largeness of their hearts that they decided to give him a gift. Does the Government intend to urge that it might have been one or the other or it might have been neither?

Mr. Bauman: I intend to urge, sir, as the Court said in its opinion at the end of the motions at the end of the Government's case that the jurors are the triers of the facts, here are the facts, you decide what happened with this money.

The Court: All right, now, you have gotten your answer.

Mr. Donohue: I haven't gotten any answer.

The Court: I am not going to put him to an election.

[7325] Mr. Donohue: I am not asking your Honor to put him to an election.

The Court: You certainly are. At least I so inferred from your statement you didn't get an an-

swer. I think you have gotten an answer. You have gotten an answer that they are going to say to the jury one group says, "It's commissions or a gift." One man says, "It's a gift." The other group says, "It's a liquidati , dividend." The Government says that it was under Klein's control at all times, not only while it was in Canada; therefore you decide what it was. And in connection with that decision whatever it was was it made then for the purpose of throwing sand in the Government's eyes.

Mr. Bauman: That is correct.

The Court: Now I think you have gotten an answer. It may not be the answer you want, Commissioner, but it is an answer.

Mr. Donohue: May I say, your Honor, I understand, of course, that your Honor determines the rules but may I most respectfully say to your Honor that the question that was posed to the United States Attorney has not been answered when in answer to the question "Was it Klein's money or was it Roer's, Koerner's and Alprin's money?" The United States Attorney says, [7326] "It was under the domination and control of Mr. Klein."

My question was, and it is unanswered, "Whose money was it?"

The Court: The Government does not have to state that.

Mr. Donohue: Very well.

The Court: The jury ultimately will make that decision as part and parcel of its decision of guilt or innocence. And I am not going to put the Government to that election.

Mr. Kiendl: If your Honor please, I know that you have ruled that the Government doesn't have to say whose money it was, but we tried to call your Honor's attention to the fact that the Government did take that position very definitely and concretely.

Now we would like this record to show, and I am not laboring the point——

The Court: May I interrupt to indicate that the Government did not take the position at any time whose money it was; it took the position at one time whose money it was not. And there is a distinction.

Mr. Kiendl: It took the definite position that it was not Klein's money.

The Court: Well, that is not a position of [7327] whose money it was.

Mr. Kiendl: That is true.

The Court: There is a distinction.

Mr. Kiendl: What I would like to do without laboring the argument, I have your Honor's view and of course we have got to comply with what your Honor rules in this court. I would just like to read into this record what Mr. Bauman has eliminated in his reading from the transcript, and I think it is perfectly clear that the representation and concession that Mr. Bauman made was to the effect that this was not Klein's money at all and the Government was not so contending.

May I just read a few pages of it?

The Court: Surely.

Mr. Kiendl: At page 3218 of the record your Honor asked Mr. Tyler this question:

"Are you urging that that money was Klein's money? And that Koerner aided him and abetted him by secreting through an agent, Alprin, $260,000-odd that was Klein's money that Klein should have reported in the year 1944, 1945, 1946?

"Mr. Tyler: Well, it doesn't quite boil down that way.

[7328] "The Court: Well, I think that is the only way it will boil down to be of any effect that I for the life of me can see, unless you claim that Koerner was aiding Klein in secreting money on which Klein should have paid a tax, I don't see how you can get it in and I am confining my analysis now only to the first three counts.

"Mr. Tyler: Your Honor, I must make this clear: that the way this money was handled, this particular $264,000, goes to the intent which the Government is charged with proving even as to the first three substantive counts.

"Now, certainly—the reason I make that point, your Honor, is that we are not urging that this is Klein's money, this $264,000, that Koerner made some kind of a deal with to take off on his shoulders and thereby minimize Mr. Klein's tax.

"The Court: Well, how, then, did Koerner aid and abet Klein in not paying his tax in 1944, '45 or '46?"

And Mr. Bauman interjected, "May I say a word on that?

"The Court: Yes, surely. I want as much guidance as I can get here.

Colloquy

[7329] "Mr. Bauman: Let's say, as Mr. Tyler has already said, the Government does not contend that this $204,000 was the property of Klein at the time it was up in Canada in Alprin's possession and the Government contends unequivocally that it was——"

And the Court interrupted,

"Well, now, just a moment. You say it was up in Canada in Alprin's possession. I don't recall anything in the record that it was up in Canada. As a matter of fact, all I know about it is that it was kept in a vault and that ultimately it was in Alprin's possession and ultimately it went into a joint vault. I don't know where.

"Mr. Bauman: Well, I represent, your Honor, that it will eventuate during the trial.

"The Court: Oh, well, that may be established later on, but as I recall the record there is nothing in the record now. Am I correct in that?

"Mr. Bauman: Yes, I think you are correct.

"The Court: All right.

"Mr. Bauman: With that in the background we claim that this was Koerner's money, not Klein's; the Government's position is that with relation to the disposition of the income from the Harwood [7330] venture there were in fact a number of schemes which sprang out of them."

And then later on at page 4409 of the record your Honor said this:

"The limitation to the fifth count only placed upon the receipt of both Government's 348 (the

Roer 1950 return) and 347 (the Alprin 1952 return) is upon the assumption that there applies to each the same qualification stated by the Government with respect to Government's 253 (the Koerner 1952 return), i.e., '. . . we are not urging that this is Klein's money, this $264,000, that Koerner made some kind of a deal with to take off on his shoulders and thereby minimize Mr. Klein's tax.'

"May I ask now, Mr. Bauman, whether that is so with respect to the Roer 1950 return, Government's 348, and the Alprin 1952 return, Government's 347?

"Mr. Bauman: I make with respect to those exhibits the same representation and concession I made with respect to the Koerner return."

And that's the full of it, your Honor.

The Court: And it is no different from what I understood to be the full of it when I made my ruling.

[7331] Mr. Bender: May I be heard, your Honor?

The Court: You may.

Mr. Bender: I would like to know whether Mr. Bauman's position that he has just taken is the same with regard to the $35,000 paid to La Ribera?

Mr. Bauman: Does your Honor direct me to answer that question?

The Court: I would inquire about it, yes.

Mr. Bauman: I think the jury can conclude that the money was received under circumstances and

directions similar to that of the other drafts.

The Court: Well now, I recognize a conflict there that confounds me. You see received under circumstances similar to the other drafts. Did Haas ever claim that $35,000 was a liquidating dividend?

Mr. Bauman: No, sir, I——

The Court: All right. Did Klein ever claim that the $35,000 was in the nature of a gift for a job well done in Harwood's?

Mr. Bauman: No, those weren't the circumstances.

The Court: As a matter of fact, I don't think there is very much dispute that what happened here was that Klein loaned—Tivoli loaned La Ribera [7332] $35,000. And then when it was unfrozen and Haas wanted to return it Klein wouldn't take it back period.

Mr. Bauman: Well, that may be your Honor's conclusion and that may well be the conclusion of the jury.

The Court: Well, I would think, I would say that it would be flying in the face of logic and it would be strictly against the weight of evidence if the jury were to attempt to find that there was any similarity on the proof before us. I don't know what may come out in the defendants' case, if anything.

Mr. Bauman: May I?

The Court: Yes, go ahead.

Mr. Bauman: May I say that with relation to that when I said the circumstances were similar I

am talking about Klein in a corporate form, then Tivoli, taking a substantial sum of money and making it payable to one of the 12 Cuban corporations that were formed on that day down there in Havana while they are directing Haas to take it up to Canada and put it into a bank account there and in effect directing Haas to hold onto it and not to do anything with it until Klein gives him the word to do it. To that extent, sir, I [7333] was suggesting that the circumstances were similar.

The Court: Oh.

Mr. Bauman: And to that extent only.

Your Honor could have gone further and said to me, "There is no proof that Haas ever subscribed to the stock of Tivoli," which would have been another circumstance?

The Court: Yes.

Mr. Bauman: And of course that is true.

The Court: Well, to summarize, am I to understand that the Government's position will be with respect to the Alprin check that while Alprin claimed it to be a stock dividend—and when I refer to the Alprin check I assume everybody knows I am referring to the check that went to La Economica in connection with which Alprin was instructed to and went up to Canada and deposited it and split amongst Marte, Aguila and Economica and then subsequently got back in toto and deposited it in 57 Street and then later on transferred it to his personal account, so that we will have no quibbling about what check I am talking about. But I am characterizing it as Alprin check.

Colloquy

Am I to understand for the information that [7334] I have been trying to exact from the Government for the defendants, that the Government will argue that the Alprin check was received by Alprin from Klein, made out to La Economica, that it was deposited in May of 1947 at Klein's instructions in Canada, that it remained in Canada until it was unfrozen—it was unfrozen I believe in February, 1949—that the proceeds were again obtained by Alprin in the name of La Economica, and that they were deposited down in New York and ultimately transferred when Klein gave clearance and that Alprin claims it was a liquidating dividend, Klein says it was in the nature of a gift, and the Government says that it is for the jury to determine whether it was that or something else?

Mr. Bauman: That is right, sir, yes.

The Court: All right.

Mr. Bauman: That is correct.

The Court: Now I understand that a similar position will be taken with respect to the Koerner check?

Mr. Bauman: Yes, sir.

The Court: And a similar position, of course with appropriate change in detail with respect to deposit, holdings, et cetera, et cetera, will be [7335] taken with respect to the Roer check?

Mr. Bauman: Yes, sir.

The Court: All right.

Mr. Bender: I still don't know about the Ribera check, your Honor.

Mr. Bauman: And when your Honor says that I am sure you are assuming the argument that I am going to make from that

The Court: Yes. The only thing I had in mind was this: Number one, that the defendants should not be foreclosed in their argument from answering that contention by virtue of the fact that they sum up before you do. That is one thing. I felt in fairness, for whatever the concession is and for whatever it is worth, having made the concession they were entitled at least to be that much forewarned that they not get up, remain silent as to that phase of the case and then you get up afterwards, make a big thing about it and they have to stand mute. That is number one.

The other thing that concerned me was that they in view of that concession for whatever it may be were entitled to know beforehand that you were going to allude to it in your summation, because if they were to assume by virtue of what happened here in the last [7336] couple of days that you would allude to it, and then in fact they opened it up by explanation and you remained silent as to it they have opened the door to an embarrassing situation needlessly.

Mr. Bauman: I see that.

The Court: And so on the basis of pure, decent, simple, ordinary fairness, a concession having been made for whatever limited or restricted purposes, it is there. They claim that they relied on it. I say that I will not instruct the jury that it constitutes a

stipulation of a fact, but I do feel—and I do think that I have gotten for them all that they are entitled to—is an expression from you as to just what your position will be and that your position will be that when you sum up.

Mr. Bauman: Well I think your Honor can assume from the fact that I have told you that it will be that that it will.

The Court: All right. And beyond that, gentlemen, I decline to press the Government. You will have to shape your course on that basis. I want a recess.

(Short recess.)

* * *

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
1	Letter of Office of Price Administration, Washington, D. C., dated March 14, 1944, to R. C. Williams, containing order setting forth maximum price per case for sales of Harwood Blended Canadian Whiskey in the United States.
2-A	An unsigned draft of an Agreement dated the day of April, 1944, between AGENCIAS, the supplier, and R. C. WILLIAMS, the agent appointing Williams as exclusive sales and distributing agent for the sale of Harwood whiskey in the United States, subject to the conditions of this agreement. A paragraph crossed by pencil marking witnesseth that for the purpose of obtaining said agency, the agent agrees to place an order for 100,000 cases of Harwood at the price and conditions herein contained. This draft is in eighteen paragraphs. It provides that Williams has obtained an OPA price order; that the agreement will terminate with the discontinuance of the OPA; that the price to be paid by the agent to the supplier for Harwoods is $19.05 per case; that Williams places an order for 100,000 cases of Harwoods and agrees to the opening of the revolving letter of credit for $200,000; that AGENCIAS represents that its president, H. H. Klein of Baltimore, Md., is authorized to act for it, and that all

escription of Government's Exhibits Remaining in Evidence

ibit No	Description
	notices shall be sent to the supplier addressed to H. H. Klein in Baltimore, and all notices to Williams shall be sent to it at its New York City address. The first part of this paragraph indicating that H. H. Klein is authorized to act for the supplier is excised by a pencil mark. A further pencil change indicates that with respect to notices to be sent to the supplier, such notices shall be sent to the supplier's address hereinbefore set forth, and a copy of that notice to be sent to H. H. Klein in Baltimore. No signatures appear on this document, but a penciled notation appears that the agreement is to be signed in Havana by Agencias, and in New York by R. C. Williams.
3	Letter from Morris O. Alprin, dated April 4, 1944, to Jules Jacobs, re: contract between Distillers Agencies, Inc., and R. C. Williams. This letter relates that Alprin enclosed a copy of the proposed agreements to Jacobs, requesting that Jacobs review the contract with a view to having the agreement concluded on a date in the immediate future at a time when Mr. H. H. Klein was to be present in New York.
4	Agreement made April 18, 1944 between Agencias, a Cuban corporation, supplier, and

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	R. C. Williams, a New York corporation, the Agent, and signed in New York City on April 18, 1944, for R.C. Williams by W. E. Mengebier and in Havana, Cuba, May 8, 1944 for Agencias by F. Gurri. This exhibit is in all respects similar to Exhibit 2-A except for the following: Paragraph 14 in Exhibit 2-A is eliminated in this exhibit. Paragraph 14 in this exhibit states that all notices shall be sent to the supplier addressed to it at its office in Cuba and a copy to be sent to H. Klein in Baltimore and that all notices to the Agent shall be sent to it at its New York City address.
5	Supplementary letter agreement between R. C. Williams and Agencias dated April 20, 1944. Letter is signed by W. E. Mengebier for R. C. Williams, and is approved and accepted for Agencias by F. Gurri. It provides that out of Williams' profits of $1.60 per case as provided in the agreement, Williams agrees to pay 60¢ per case to brokers selected by it, subject to the approval of Agencias; that Williams will make no sales to wholesalers without written approval of the customer and the quantity.
6	Letter from R. C. Williams dated April 20, 1944 to Agencias in Havana, Cuba, enclosing the following documents:

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	1) Memorandum of Agreement of April 18, 1944
	2) Supplemental Agreement—April 20, 1944
	3) Order dated April 18, 1944 for 100,000 cases of Harwoods.
7	Letter from R. C. Williams dated April 18, 1944 to Agencias, containing order for 100,000 cases of Harwoods, conditioned upon Agencias' acceptance of the proposed agreement and any supplemental agreements.
8	Opinion Letter of Maurice A. Haas dated April 17, 1944 to Morris O. Alprin, New York City, as to the federal tax consequences to Agencias of proposed Agencias-R. C. Williams agreement. In his letter Haas discusses the proposed contract and made certain comments and recommendations with respect thereto. He stated that the contract should merely provide for the general conduct of the business and that the order for 100,000 cases by the American company appearing in the contract should be eliminated, and should follow the execution of the agreement and that the Agent should by separate instrument send an order to Cuba for the 100,000 cases to be accepted by the supplier there. Further Haas recommended that final action in all matters should be taken in Cuba and not

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	by the President who under paragraph 15 of the agreement was empowered to act in its behalf. He suggested that all correspondence be sent to Cuba and that a copy be forwarded to the President. Haas concludes that with the foregoing amendments it is his opinion that the Cuban corporation would be considered a non-resident foreign corporation not doing business within the United States and therefore not subject to tax on its profits from the sale of whiskey in this country, although he cautioned that the Treasury Department follow the Court in this matter and that it might involve resort to the Courts in order to sustain the position he describes.
9	Letter dated December 29, 1944 from Morris Alprin to R. C. Williams, marked to the attention of Koerner in which Alprin confirms his understanding that he is to be paid 60¢ per case on each case of Harwoods received by Koerner under the above contract, and sold to retailers through the Wholesale Division of R. C. Williams, and that such compensation shall be in full payment for his services rendered in behalf of R. C. Williams under the contract. Alprin requests that enclosed copy of this letter be signed by R. C. Williams, indicating their concurrence.

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
10	Letter dated Jan. 26, 1945 from Alprin to R. C. Williams, attention of Koerner, advising that Alprin was enclosing his bill in accordance with arrangement covering Harwood Whiskey which was received by R. C. Williams under the contract and sold to retailers through the Wholesale Division of R. C. Williams. In pencil on this letter appears the entry: "$3,963.60 up to 12/31/44."
11	Letter of Morris O. Alprin to R. C. Williams & Co., attention of Mr. Koerner, dated April 7, 1947, confirming conference between Koerner and Alprin and advising that upon payment by Williams to Alprin of the 60¢ per case on sales to retailers through Williams' Wholesale Division from the time of the last settlement in March of 1946 up to the time the contract was cancelled in June 1946, Alprin's arrangement with R. C. Williams would terminate. (Typewritten portion only of letter admitted in evidence.)
12	Letter on letterhead of Agencias Distiladores, S. A. to R. C. Williams & Co., dated May 8, 1944, signed Enrique de Cubas, stating that pursuant to R. C. Williams' request, it is agreeable to Agencias that Williams communicate directly with Duncan Harwood & Co., Canada, in connection with any and all matters relating to shipments of Harwood's Whiskey.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
13-a to 13-k, incl.	Eleven commercial invoices of Agencias Distiladores, S. A. to Glen L. Clark & Co., California, dated from March 31, 1945 to December 8, 1945, all signed by William Rokoff, covering the shipments of Highland Sandy Liqueur Whiskey, except that two invoices cover Jockey Cap Canadian Whiskey (Ex. 13d and 13g) and one invoice includes both Highland Sandy Liqueur Whiskey and Jockey Cap Canadian Whiskey Ex. 13-k). All shipments were from John Dunbar & Co. Ltd., Canada.
15-a to 15-e, incl.	Five commercial invoices from H. Harvey Company Limited to Glen L. Clark & Co., California, dated from February 8, 1946 to May 31, 1946, covering shipments of Auld Malcolm Highland Liqueur, shipped from Peter Malcolm & Co., Ltd., Canada.
16-a	Increase in quotas by states for Harwood's Whiskey for months of May and June and allocations of Harwood's Whiskey to various wholesalers by states for the period from May 1 to June 30.
16-b	Quotas for months of June, July, August and September—Revised May 23, 1946—for distribution of Harwood's Whiskey to Wholesalers by states and quotas for distribution of Harwood's Whiskey to monopoly states for months of June, July, August and September Revised effective May 24, 1946.

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
16-c	Quotas for months of June, July, August and September for distribution of Harwood's Whiskey to wholesalers by states and quotas for distribution of Harwood's Whiskey to monopoly states for months of June, July, August and September. It is stipulated that this exhibit was typed in the office of H. Harvey & Co. Ltd. in Baltimore (SM 4367).
16d	Quotas for month of November for distribution of Harwoods Whiskey to Wholesalers by States and quotas for month of November for distribution of Harwood Whiskey to Monopoly States.
17	Letter addressed "Dear Irv:" dated May 18, 1946 stating that Irv should change his quotas for June through September in the manner set forth therein to distributors.
18	Letter on letterhead of Ramsey Scott Exportadores, S.A. to R. C. Williams & Co., attention Mr. Koerner, dated January 2, 1946, signed by de Cubas advising that, regarding the assignment by Agencias Distiladores of their Harwood's agreement with Williams to Ramsey Scott, Ramsey Scott has assumed and agrees to perform the agreement with Agencias Distiladores. It is stipulated that this letter was typed in Baltimore (SM4392).

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
21	Consists of covering letter and enclosures. The covering letter is on the letterhead of Hyman Harvey Klein, 2700 Wilmarco Avenue, Baltimore, dated March 7, 1944, addressed to: Mr. R. Harold Ostrow J & J Dunbar & Company Seattle and states that the enclosure is a copy of letter from attorney J. Stanley Halperin, while he was in New York, to "I. J.", "which you will find interesting and self-explanatory"; signed H. H. Klein. The enclosure is an opinion letter signed by attorney J. Stanley Halperin on his own letterhead, dated March 3, 1944. The letter mentions the possible tax liability of the individuals in the American group and noted that, under the law, if a person or persons acquired control of a corporation then the principal purpose for the acquisition is evasion or avoidance of federal taxes by securing the benefit of distributions, credits or other allowances, then such allowances would not be allowed. The letter stated that there was a legal question as to whether organizing a corporation would be an acquisition of control but stated that assuming it were, if the principal purpose for the acquisition were a sound business reason, then

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	there would be no purpose of evasion or avoidance.
24	Letter on letterhead of Ramsey Scott to R. C. Williams & Co., signed by de Cubas, dated December 29, 1945, stating that the Agencias contract with Williams had been assigned to Ramsey Scott effective January 15, 1946.
25	Letter on letterhead of Agencias to R. C. Williams & Co., dated December 28, 1945, advising that Agencias has assigned its agreement with Williams to Ramsey Scott effective January 15, 1946.
88a	Translation of Panamanian Certificate of Incorporation of Regan, Potter & Co., Ltd., S. A., dated April 9, 1945. It states that directors and officers shall be Hyman Harvey Klein, Isidore Jacob Klein, Albert Loftus, McLennan and Ellis Rosenberg.
89a	Translation of Panamanian Certificate of Incorporation of Tivoli Trading Co., S. A., dated April 9, 1945. It states that the directors shall be Ellis Rosenberg, Hyman Harvey Klein, Harris Samuel Lechtzier and Albert Roer and that the officers shall be Ellis Rosenberg, Edward McLennan, Harris Samuel Lechtzier and Albert Roer.
90a	Translation of Panamanian Certificate of Incorporation of Waldorf & Co., S. A., dated

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	December 19, 1945. The directors of the corporation are listed as Enrique de Cubas, Ricardo Moran and Francisco Gurri all of Havana, Cuba.
91a	Translation of Panamanian Certificate of Incorporation of Seaboard Syndicate, S. A., dated December 19, 1945. The directors of the corporation are listed as Enrique de Cubas, Ricardo Moran and Francisco Gurri all of Havana, Cuba.
92a	Translation of Panamanian Certificate of Incorporation of Cameron Stewart Co., dated November 8, 1945. The directors of the corporation are listed as Enrique de Cubas, Ricardo Moran and Francisco Gurri—all of Havana, Cuba.
93a	Translation of Panamanian Certificate of Incorporation of Douglas Ryan Syndicate, dated January 20, 1945. The directors are listed as Hyman Harvey Klein, Ellis Rosenberg and Edward McLennan and the officers are listed as Hyman Harvey Klein, Edward McLennan, Ellis Rosenberg, Harris Samuel Lechtzier and Harry Heath Allen, Jr.
117a	Yellow carbon of letter dated April 16, 1946 to Mortimer J. Glueck in Hawaii, from R. C. Williams & Company, Inc. by I. A. Koerner,

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	Manager, Liquor Department, in re: availability of Harwoods for Glueck.
117b	An original of a typewritten letter on white paper dated April ...., 1946. It is an exact copy of 117a in language, except that 117b does not designate whom the letter shall be signed by. It is stipulated that this exhibit was typed in Alprin's office in New York City (SM 4388).
117c	An original of a letter dated April 5, 1946 to R. C. Williams & Company, Inc., attention Mr. Irving A. Koerner. The salutation is to Mr. Koerner and the letter is in reference to Mortimer J. Glueck, Honolulu, Hawaii. The letter is signed by Morris O. Alprin and indicates that pursuant to a telephone conversation between Koerner and Alprin, Alprin is sending Koerner a draft of a letter for Koerner to address to Glueck, to assist Glueck in getting permits and requesting that Koerner consider Glueck for shipments of Harwoods or other merchandise to replace Glueck's merchandise which was destroyed in a tidal wave.
118a	An original or a signed carbon of a letter dated August 2, 1945, to Agencias Distiladores in Havana, Cuba, by R. C. Williams & Company by I. A. Koerner in reference to Harwoods Gin.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
118b	An original of a typewritten letter which is identical in phrasing to 118a and is likewise dated August 2, 1945, but it is not indicated by whom in R. C. Williams & Co., Inc., it is to be signed. It is stipulated that this exhibit was typed in the office of Morris Alprin in New York City (SM 4380).
119a	A letter dated August 2, 1945 to Agencias Distiladores at Havana, Cuba, from R. C. Williams & Company, by I. A. Koerner, in reference to Harwoods whiskey and the sale thereof to Monopoly States.
119b	An original typewritten letter identical to 119a, except that it does not indicate by whom in R. C. Williams Co. the letter will be signed. It is stipulated that this exhibit was typed in the office of Morris Alprin in New York City (SM 4380).
129	A postal telegram, dated 10/21 p. m., May 15, 1944 to Irving Koerner from H. H. Klein, dateline Vancouver, British Columbia, in reference to certain glass of which Klein was in correspondence with Alprin on May 3rd, which Klein states Alprin informs him has been received by Koerner. Klein asks Koerner to

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	apply to the Alcohol Tax Unit for permit to use the glass they have.
147	A carbon copy of a Western Union telegram dated May 16, 1944 to Distiladores agencies at Havana, from R. C. Williams & Co., requesting approval of sales to certain wholesale firms, and requesting approval of the appointment of Albert Roer of New York City and S. L. Cohen of Chicago to contact the wholesale trade.
148	An original telegram to R. C. Williams from Havana, Cuba, dated May 18th to wholesale firms confirming the sales to wholesale firms and the appointment of Roer and Cohen.
153	An original letter to R. C. Williams & Co., att. Mr. I. A. Koerner with the salutation "Dear Mr. Koerner" from Agencias Distiladores signed by F. Gurri in reference to appointment of Harold Cohen and Irving Wolf as Sales Representatives. It is stipulated that this letter was typed in Baltimore (SM 4392).
249	An October 15, 1952 statement of Irving A. Koerner—will be summarized by the Judge.
250	A photostat of a check to the order of Tivoli Trading Company for $500, dated October 2, 1945, check No. 156, the drawer being Irving

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	A. Koerner. The check was deposited in November 1945.
251	A photostat of a receipt for $500 in repayment in full for subscription to capital stock, said subscription having been cancelled, signed I. A. Koerner.
253	A photostat of a joint income tax return of Irving A. Koerner and Marie A. Koerner for the year 1922 on which there is represented as a long term capital gain $261,112.70 from sale of stock in Tivoli. According to the schedule the stock was sold on March 12, 1952 for $264,162.70 and was purchased in 1945 for $500.
254	A letter to Thomas W. Hill, Assistant U. S. Attorney from Morris O. Alprin, dated May 6, 1954, enclosing photostatic copies of Alprin's letter dated April 17, 1944 and April 19, 1944 addressed to H. H. Klein, Baltimore, Maryland. The April 17, 1944 photostat letter states that it encloses an opinion of Haas, Schlessinger and Mayers, and indicating that Alprin has arranged with Jacobs to follow the suggestions in the opinion from Haas, Schlessinger and Mayers. The letter dated April 19, 1944, outlines to Mr. Klein the procedure in the Distiller's Agency with R. C. Williams & Co., Inc. matter. Written in hand on page 1, appears the following:

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	"4/21 approved by H. H. K.—phoned Jacobs to mail contracts to Cuba" and on page 3 at the very bottom appears the words "checked Haas".
201	SUMMARY OF CONSULAR INVOICES ACCOMPANYING HARWOOD SHIPMENTS BY CATEBORES:
	1. (Seller) United Distillers, Ltd. (Purchaser) R. C. Williams Co., Inc. (Acct. of) Agencias Destilladores
	2. (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd. (Purchaser) R. C. Williams & Co., Inc. (Acct. of) Agencias Destilladoras, S.A.
	3. (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd. (Purchaser) R. C. Williams & Co., Inc. (Acct. of) Agencias Destilladores
	4. (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	(Purchaser) R. C. Williams & Co., Inc. (Acct of) Compania Ramsey Scott Exportadores, S. A.
5.	(Seller) United Distillers, Ltd. for Duncan Harwood & Co., Inc. (Purchaser) R. C. Williams & Co., Inc. (Acct. of) Compania Ramsey Scott Exportadores, S. A.
	SUMMARY OF CONSULAR INVOICES ACCOMPANYING AULD MALCOLM SHIPMENTS
262 1.	(Seller) United Distillers, Ltd. for Peter Malcolm & Co. Ltd. (Purchaser) F. Strauss & Son of New Orleans (Acct. of) Kent Exporters, Inc. (Entered by) H. Harvey Co. Baltimore, Md.
2.	(Seller) United Distillers, Ltd. for Peter Malcolm & Co. Ltd. (Purchaser) Pioneer Atlas Liquor Co. Chicago

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	(Acct. of) Kent Exporters (Entered by) H. Harvey Co., Baltimore
3.	(Seller) United Distillers, Ltd. for Peter Malcolm & Co. Ltd. (Purchaser) H. Harvey Co. Ltd. (Acct. of) Kent Exporters, Inc.
4.	(Seller) United Distillers, Ltd. for Peter Malcolm & Co. Ltd. (Purchaser) H. Harvey Co. Ltd. (Acct. of) Kent Exporters, Inc.
263	CONSULAR INVOICES ACCOMPANYING DUNBAR'S WHISKEY SHIPMENTS (Seller) United Distillers, Ltd. for John Dunbar & Co., Ltd. (Purchaser) H. Harvey Co. Ltd. (Acct. of) Kent Exporters, Inc.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
261-A	CONSULAR INVOICES JUNE 21, 1944 SHOWING SHIPMENT OF 1600 CASES OF HARWOOD'S. (Seller) United Distillers, Ltd. (Purchaser) R. C. Williams & Co., Inc. (Acct. of) Agencias Destilladores.
261-B	CONSULAR INVOICE SEPTEMBER 12, 1944 SHOWING SHIPMENT OF 1750 CASES OF HARWOOD'S. (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd. (Purchaser) R. C. Williams & Co., Inc. (Acct. of) Agencias Destilladores
261-C	CONSULAR INVOICE OF FEBRUARY 3, 1945 SHOWING SHIPMENT OF 1750 CASES OF HARWOOD'S. (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd. (Purchaser) R. C. Williams & Co., Inc.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	(Acct. of) Agencias Destilladores (distinguished from Category 2 by the addition of pint and half-pint prices).
261-D	CONSULAR INVOICE FEBRUARY 4, 1946 SHOWING SHIPMENT OF 1750 CASES HARWOOD'S (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd. (Purchaser) R. C. Williams & Co., Inc. (Acct. of) Compania Ramsey Scott Exportadores, S. A.
261-E	CONSULAR INVOICE NOVEMBER 5, 1945 SHOWING SHIPMENT OF 1750 CASES OF HARWOOD'S (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd. (Purchaser) R. C. Williams & Co., Inc., (Acct. of) Agencias Destilladores.
261-F	CONSULAR INVOICE OF JULY 4, 1946 SHOWING SHIPMENT OF 1,000 CASES OF HARWOOD WHISKEY (Seller) United Distillers, Ltd. for Duncan Harwood & Co., Ltd.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	(Purchaser) R. C. Williams & Co., Inc. (Acct. of) Compania Ramsey Scott Exportadores, S. A.
269	Photostat of draft drawn on the Royal Bank of Canada, March 27, 1947, to the order of La Economica Agencias, S. A. for $264,162.70, endorsed to the order of Irving Koerner by Morris Alprin and by Koerner for deposit.
270	Certificate of resolution signed by Sadie F. Alprin as secretary of La Economica Agencias on March 7, 1952, showing resolution that check No. 1862 00 of Royal Bank of Canada (Gov. 269) to be the property of Irving Koerner and empowering the officers of Economica to endorse the check to Koerner.
271-A	Translation of certificate showing that La Economica Agencias was organized June 29, 1946.
271-B	Translation of certificate showing that La Importadora Marte, S. A., was organized June 29, 1946.
271-C	Translation of certificate showing the organization of El Aguila Exportadora June 29, 1946.
271-D	Translation of certificate showing organization of Compania Comercial, S. A. on June 29, 1946

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
272	Translation of certificate showing the organization of Compania Exportadora Fernandina, S. A., on June 29, 1946.
286	Bank records of Cameron Stuart Company, Ltd., Royal Bank of Canada, New York: Check No. 104, dated 9/6/46, in the amount of $769,850. The payee is the Royal Bank of Canada; the payor is Cameron Stuart Company, Ltd., S. A., by H. H. Klein, president. Check No. 105, dated 9/6/46, in the amount of $645,325. The payee is the Royal Bank of Canada; the payor is Cameron Stuart Company, Ltd., S. A., by H. H. Klein, president. Check No. 106, dated 9/6/46, in the amount of $654,996.56. The payee is the Royal Bank of Canada; the payor is Cameron Stuart Company, Ltd., S. A., by H. H. Klein, president. Check No. 110, dated 9/12/46, in the amount of $14,050, to Tivoli Trading Company. The payor is Cameron Stuart Company, Ltd., S. A., by H. H. Klein, president.
287	Bank records of Cameron Stuart Company, Ltd., Royal Bank of Canada, Montreal, Quebec: Check No. . . . . dated 9/18/46, in the amount of $3,000,000. The payee is Compania Continentale, S. A.; the payor is Cameron Stuart Company, Ltd., S. A., by H. H. Klein, president.
288	Bank records of Cameron Stuart Company, Ltd., S. A., Chase National Bank of New York:

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	Cashier's Check No. 581,557, dated 9/3/46, in the amount of $346,200; paid to the order of Cameron Stuart Company, Ltd., S. A., signed by the Assistant Manager of the Foreign Department and countersigned by Ruck.
	Check No. 581,558, dated 9/3/46, in the amount of $252,700, paid to the order of Cameron Stuart Company, Ltd., S. A., signed by the Assistant Manager of the Foreign Department and countersigned by Ruck.
	Applications for both cashier's checks are in the file and indicate that the cashier's checks were issued at the request of Rokoff and Rosenberg who personally appeared at the Bank according to memoranda written by Ruck dated 9/3/46.
	Check No. 112, dated 8/26/46, in the amount of $346,200. Chase National Bank is the payee and the payor is Cameron Stuart Company, Ltd., by H. H. Klein, president.
	Check No. 113, dated 8/26/46, Chase National Bank payee; payor, Cameron Stuart Company, Ltd., S. A., by H. H. Klein, president; in the amount of $252,700.
290	Exportadora de la Costa, S. A. Bank Records, Royal Bank of Canada, New York, New York: Check No. 53, dated 8/26/46. The payee is Royal Bank of Canada; the payor is Exporta-

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
	dora de la Costa, S. A., H. H. Klein, president; in the amount of $375,000.
	Check No. , dated 9/26/46, in the amount of $17,470.13. The payee is Exportadora de la Costa, by Exportadora de la Costa, S. A., by H. H. Klein, president.
302	Bank records of Regan Potter Company, Ltd., S. A., Royal Bank of Canada, New York, New York:
	A debit memorandum dated 8/29/46, debiting the account of Regan Potter & Company, Ltd., S. A., for a transfer to Montreal on Aug. 30, 1946 of $475,000.
	Check No. , dated 9/27/46, in the amount of $106,966.87. The payee is Regan Potter Company, Ltd., S. A.; the payor is Regan Potter & Company, S. A., by H. H. Klein, president.
303	Bank records of Regan Potter & Company, Ltd., S. A., Royal Bank of Canada:
	Securities file (bonds): Letter dated 9/12/46 addressed to the Royal Bank of Canada at 68 William Street, from Regan Potter & Company, Ltd., S. A., by H. H. Klein, president, requested the transfer of all Dominion of Canada 1¾% bonds to the Montreal Branch.

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
308	Bank records of Regan Potter & Company, Ltd., S. A., Chase National Bank, New York. New York:
	Check No. 125, in the amount of $453,000. The payee is Chase National Bank; payor, Regan Potter & Company, Ltd., S. A., H. H. Klein, president. The check is dated 8/26/46.
	Cashier's check No. 581,560, dated 9/3/46, in the amount of $453,000. The payee is Regan Potter & Company, Ltd., S. A., drawn by the Assistant Manager of the Foreign Department, countersigned by Ruck. There is an application for this cashier's check with memorandum by Ruck to the effect that it was issued at the request of Rokoff and Rosenberg.
	Check No. 126, dated 8/26/46, in the amount of $345,630. The payee is Chase National Bank; the payor is Regan Potter & Company, Ltd., S. A., by H. H. Klein, president.
	Cashier's check 581,559, dated 9/3/46, in the amount of $345,630. The payee is Regan Potter & Company, Ltd., S. A., drawn by the Assistant Manager, Foreign Dept., countersigned by Ruck.
	There is an application for this cashier's check with a memorandum written by Ruck to the effect that Rokoff and Rosenberg requested its issuance.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
308 (Cont'd)	Check No. , dated 9/27/46, in the amount of $194,761.48. The payee is Regan Potter & Company, Ltd., S. A.; the payor, Regan Potter & Company, Ltd., S. A., by H. H. Klein, president. It has been stipulated that these funds were transferred to accounts in Montreal, Canada of various Cuban and Panamanian corporations in which the defendant Klein was the authorized signatory.
309	In Bank Records of SEABOARD SYNDICATE S. A., THE ROYAL BANK OF CANADA, N. Y. (Securities File.), the following: Letter dated Sept. 12, 1946 to the ROYAL BANK OF CANADA, 68 William Street, New York, N. Y. from THE SEABOARD SYNDICATE, S. A. by H. H. Klein, President, requesting transfer of all Dominion of Canada, 1¾% Bonds to the Montreal Branch.
310	In Bank Records of SEABOARD SYNDICATE S. A. THE ROYAL BANK OF CANADA, NEW YORK, N. Y., the following: Debit Memo dated December 24, 1946 charging the account of SEABOARD SYNDICATE S. A. for $142,793.63 for a transfer to Montreal.
313	In Bank Records of SEABOARD SYNDICATE S. A. CHASE NATIONAL BANK, NEW YORK, N. Y., the following: Check dated

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
313 (Cont'd)	Sept. 26, 1946 with Payee THE SEABOARD SYNDICATE, S. A.; Amount $47,262.16, Payor SEABOARD SYNDICATE S. A. by H. H. Klein, President.
314	In Bank Records of WALDORF & Co. LTD. S. A. (Securities File), ROYAL BANK OF CANADA, NEW YORK, NEW YORK, the following: Letter dated September 12, 1946 to ROYAL BANK OF CANADA, NEW YORK from WALDORF & Co. LTD. S. A. signed by H. H. Klein, President, requesting transfer of all Dominion of Canada, 1¾% Bonds to the Montreal Branch.
315	In Bank Records of WALDORF & Co. LTD. S. A., THE ROYAL BANK OF CANADA, NEW YORK, N. Y., the following: Check dated Sept. 27, 1946 with payee WALDORF & Co. LTD. S. A.; Amount $232,619.29, Payor WALDORF & Co. LTD. S. A. by H. H. Klein, President.
320	In Bank Records of COMPANIA CONTINENTAL, S. A. THE ROYAL BANK OF CANADA, MONTREAL, Quebec (U. S. Funds), the following: Check numbered dated November 4, 1946 Payee CAMERON, STUART Co. LTD. S. A., Amount THREE MILLION AND 00/100 DOLLARS, payor COMPANIA CONTINENTAL, S. A. by H. H. Klein, President.

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
324	Bank Records of HANNES & Co. LTD. S. A. THE ROYAL BANK OF CANADA MONTREAL, QUE.
325	Bank Records of HANNES & Co. LTD. S. A. ROYAL BANK OF CANADA TORONTO ONT.
333	Bank Records of LA IMPORTADORA MARTE, S. A., THE ROYAL BANK OF CANADA, TORONTO, ONTARIO
334	Bank Records of LA ECONOMICA AGENCIAS, S. A., THE ROYAL BANK OF CANADA, TORONTO, ONTARIO.
336	Bank Records of EL AGUILA EXPORTADORA, S. A., THE ROYAL BANK OF CANADA, TORONTO, ONTARIO
337	Bank Records of COMPANIA COMERCIAL LA RIBERA, S. A., THE ROYAL BANK OF CANADA, TORONTO, ONTARIO
339	Bank Records of TIVOLI TRADING CO. S. A., ROYAL BANK OF CANADA, New York branch.
340	Bank Records of TIVOLI TRADING CO., ROYAL BANK OF CANADA, Montreal, Que.
347	Joint income tax return of Morris and Sadie Alprin for 1952 where there is represented as a capital gain the sum of $263,612.64 resulting from a sale of stock of Tivoli Trading Co. S. A. for $264,112.64 which occurred on 2/29/52. According to the capital gain sched-

Description of Government's Exhibits Remaining in Evidence

Exhibit No. | Description

ule the stock was purchased on 10/23/45 for $500.

348 — Joint income tax return of Albert and Kate Roer, New York for 1950 on which there is represented as a long term capital gain $271,423.62 from stock interest in Tivoli Trading Co. According to the schedule the stock was sold on 3/27/50 for $272,423.62 and was purchased on 9/25/45 for $1000.

355 — Copy of declaration of Estimated Tax for 1947 of H. H. Klein, 122 East 42nd St., New York, dated March 4, 1947 wherein the estimated tax for 1947 is $1,203,500, stating that $300,000 of the estimated tax is paid with this declaration.

356 — Income tax return of H. H. Klein, 122 E. 42nd St. New York for 1947, including a schedule of long term capital gains and losses in which there is included the sale of Waldorf Seaboard and Regan Potter stock on 1/20/47 as follows:

	Name	Date Acquired	Date Sold	Sales Price	Cost	Profit
15,000	Waldorf & Co.	1/30/45	1/20/47	$ 960,663.26	$100.	$ 960,563.26
15,000	Seaboard Syndicate	January Apr. 1945	1/20/47	$2,771,590.69	$700.	$2,770,890.69
4	Regan Potter & Co.	4/11/45	1/20/47	$ 978,132.90	$100.	$ 978,032.90

358 — Opinion letter dated February 27, 1945 to Agencias, 411 Aguiar St., Havana, Cuba from

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	Maurice V. Haas. Making reference to memo of agreement between Agencias and R. C. Williams dated April 18, 1944 and stating that he has been requested to give special attention to the tax effect of Agencias' method of carrying out its end of the agreement in the United States. In his final paragraphs, Haas cautions for the second time that the Treasury Department is not in accord with these principles and that further, as a practical matter, if the President of Agencias—instead of just performing the functions incident to payment—is in fact doing business in the United States, such as supervising the shipments of the merchandise to Williams, and carrying out the multitude of details which must be involved in these transactions, then Agencias would be doing business in the United States and subject to tax.
359	Opinion letter from Henry G. Burke, attorney at law, Baltimore, Md., dated March 6, 1945, addressed to Agencias, 411 Aguier Street, Havana, Cuba. Burke refers to Memorandum-Agreement of April 18, 1944, entered into by Agencias and R. C. Williams and states that the income of Agencias is earned principally in connection with the sales made under the terms of this agreement and concludes that the Agencias income is not taxable in the United States.

Description of Government's Exhibits Remaining in Evidence

Exhibit No.	Description
377	Bookkeeping record of Compania Continental, S. A. containing photostatic copies of various ledger sheets.
378	Bookkeeping record of Cameron, Stuart & Company, Ltd. S. A.
379	Bookkeeping record of Regan, Potter & Company, Ltd. S. A.
380	Bookkeeping record of Tivoli Trading Company, S. A.
381	Balance sheets and profit and loss statements of Regan, Potter, Waldorf, Seaboard Syndicate, Exportadora Dela Costa Cia, Ramsey Scott, Exportadora Kent, Cameron Stuart Cia, Continental as of December 31, 1946.
388	Five (5) photostatic copies of receipts: Receipt containing the signature Harry Silver, reciting that $100. is received from the Tivoli Trading Co. S. A., repayment in full for subscription to capital stock, said subscription having been cancelled; Receipt containing the signature Ellis Rosenberg, reciting that $200. is received from the Tivoli Trading Co. S. A., repayment in full for subscription to capital stock, said subscription having been cancelled; Receipt containing the signature Morris O. Alprin, reciting that $500. is received from the Tivoli Trading Co. S. A., repayment in full for subscription to capital stock, said subscription having been cancelled;

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	Receipt containing the signature Albert Roer, reciting that $1,000. is received from the Tivoli Trading Co. S. A., repayment in full for subscription to capital stock, said subscription having been cancelled;
	Receipt containing the signature I. S. Koerner, reciting that $500. is received from the Tivoli Trading Co. S. A., repayment in full for subscription to capital stock, said subscription having been cancelled.
389	Photostatic copy of receipt containing the signature William Rokoff, reciting that $150. is received from the Tivoli Trading Co. S. A., repayment in full for subscription to capital stock, said subscription having been cancelled.
396	Bank records of the New York Branch of the Bank of Nova Scotia, for the account of Cia. Exportadora Fernandina, S. A.:
	Signature card of A. Roer, President of Cia. Exportadora Fernandina—address of Corporation given as:
	c/o Dr. Alberto Valverde in Havana Cuba;
	Signature card of Kate Roer, Treasurer.
	two (2) sheets of Corporation's bank statements, showing entries from March 27, 1950 (when a deposit of $272,423.62 was entered) to October 20, 1952 when a final withdrawal of $523.53 brought the balance in the account to zero.

Description of Government's Exhibits Remaining in Evidence

Exhibit No	Description
	Acknowledgment of bank dated March 27, 1950 showing deposit to Corporation's account received by mail in the amount of $272,423.62.
	Royal Bank of Canada draft dated March 27, 1947, to the order of Cia. Exportadora Fernandina, S. A., in the amount of $272,423.62. Five (5) checks of Cia. Exportadora Fernandina, payable to the order of Albert Roer, on the Corporation's account in the Bank of Nova Scotia, (N. Y. Branch) dated from April 6, 1950 to June 8, 1950, totalling $272,000. and all marked "paid".
	Translation of certification by the Central Registrar of corporations in Cuba that Cia. Commercial La Ribera, S. A. was organized in Cuba on June 29, 1946.
403	Translation of certification by the Central Registrar of Corporations in Cuba that Cia. Commercial La Ribera, S.A. was organized in Cuba on June 29, 1946.
	Addendum
2-B	Another unsigned draft of an Agreement to be dated in April, 1944 between Agencias, the supplier, and R. C. Williams & Co., the agent.
264	Signed statement by Morris O. Alprin to agents of Internal Revenue Service dated September 11, 1952. (To be summarized by the Court).
265	Signed statement by Morris O. Alprin to agents of Internal Revenue Service date October 21, 1952 (To be summarized by the Court).

Description of Defendants' Exhibits Remaining in Evidence

KL E — Letter dated May 8, 1944 from Zayas Moran to R. C. Williams enclosing copies of the main Agencias-R. C. Williams contract and supplemental agreement duly executed.

KL F — Receiver's copy of cable dated May 8, 1944 from Agencias to R. C. Williams accepting Agencias-R. C. Williams contract.

KL F1 — Sender's copy of cable dated May 8, 1944 from Agencias to R. C. Williams accepting Agencias-R. C. Williams contract.

KL G — Receiver's copy of cable dated May 8, 1944 from Agencias to R. C. Williams accepting first order for 100,000 cases of Harwood's Canadian Whiskey.

KL G1 — Sender's copy of cable dated May 8, 1944 from Agencias to R. C. Williams accepting first order for 100,000 cases of Harwood's Canadian Whiskey.

KL H — Letter dated May 10, 1944 from Agencias to R. C. Williams confirming cable accepting first order for 100,000 cases of Harwood's Canadian Whiskey.

KL J — Unsigned sender's copy of Letter dated January 2, 1946 from Agencias to R. C. Williams authorizing the latter to amend any and all letters of credit in favor of Agencias by adding Ramsey Scott as beneficiary; and authorizing R. C. Williams to make payment to Ramsey

Scott for any merchandise covered by documents in the name of Agencias received by the Chase National Bank of New York on or after January 16, 1946.

KL K — Letter dated January 8, 1946 from R. C. Williams to Ramsey Scott agreeing to re-establish the letter of credit for the benefit of Ramsey Scott effective January 15, 1946.

AL R — Unsigned draft of Agencias-R. C. Williams supplemental agreement dated April 18, 1944 in the form of a letter on the letterhead of R. C. Williams and addressed to Agencias Destiladoras, S. A.

AL S — Letter dated April 13, 1944 from Jules Jacobs to Morris O. Alprin enclosing a draft of the supplemental agreement.

KL AI — Letter dated January 17, 1946 from R. C. Williams to Ramsey Scott enclosing letter of credit #37409, together with extra copies of said letter.

KL AN — Nine credit memoranda of Agencias Destiladoras, S. A., two dated November 17, 1945, three dated November 27, 1945, and the remaining ones dated respectively December 3, 1945, December 11, 1945, December 12, 1945 and December 18, 1945.

KL AT — Certificate of English translation of incorporation of Clayton & Childs Exporters, Inc. showing incorporation of that Company in Havana, Cuba on August 23, 1943.

Description of Defendants' Exhibits Remaining in Evidence

KL AU Certificate of incorporation (in English) of Agencias Destiladoras, S. A. showing the organization of that Company in Havana, Cuba on January 26, 1944.

KL AY Group of shipping documents headed by letter from Duncan Harwood & Co. to Agencias Destiladoras, S. A. dated June 29, 1944.

KL BG Duplicate original of agreement dated February 1, 1944 between Duncan Harwood & Co. Ltd. of Vancouver, British Columbia, Canada and Agencias Destiladoras, S. A., whereby Duncan Harwood appointed Agencias Destiladoras its exclusive agent to distribute Harwood's Blended Canadian Whiskey throughout the entire world and whereby Agencias Destiladoras agreed to pay $8.05 per case of 12 bottles of fifths for said whiskey by letter of credit to be established by Agencias in favor of Duncan Harwood, the agreement to run for a period of ten years and Agencias Destiladoras to have the right to assign the agreement to any other person, firm or corporation upon the written approval of Duncan Harwood.

KL BH Duplicate original and carbon copy of letter dated May 8, 1944 from Agencias Destiladoras to Duncan Harwood & Co. Ltd., Vancouver, British Columbia, Canada, advising that Agencias has informed R. C. Williams & Co. that they might communicate directly with Duncan Harwood relating to shipments of Harwood's

Blended Canadian Whiskey in order to save time and delay and eliminating the necessity of R. C. William writing to Agencias about any matter regarding which they could write to Duncan Harwood direct.

KL BJ Carbon copy of letter dated May 10, 1944 from Agencias to J. N. Goddard & Sons, Ltd., Barbados, B. W. I., referring to the fact that H. H. Klein had assigned to Agencias his contract with Goddard covering 100,000 gallons of alcohol; and advising Goddard that funds made available to it under a $15,000 letter of credit to its order through National City Bank of New York in Havana had been released by the Havana authorities; also advising that future letters of credit in connection with shipments of the alcohol from Goddard to United Distillers, Ltd. in Canada would reach Goddard more promptly.

KL BK Carbon copy of cable dated June 30, 1944 from Agencias Destiladoras to J. N. Goddard & Sons, Ltd., Barbados, B. W. I. requesting Goddard to cable United Distillers, Ltd. at Vancouver, B. C., Canada, when a shipment of alcohol consigned to United Distillers leaves so that United Distillers might cover same with insurance.

KL BM Photostatic copy of resolution passed by board of directors of Agencias at a meeting held September 6, 1944 authorizing the opening of a bank account at the Chase National Bank at

any of its branches in New York City and authorizing H. H. Klein as president and treasurer of the Corporation to sign documents with respect to any funds in said account and to transact business with the bank on behalf of the Corporation.

KL BQ Original certificate of incorporation in English of Compania Ramsey Scoft Exportadora, S. A., showing the incorporation of that Company at Havana, Cuba on October 12, 1945.

KL BR Original certificate dated December 29, 1945 of resolution adopted at a general meeting of stockholders of Ramsey Scott held December 27, 1945 authorizing H. H. Klein as president and treasurer to open a bank acount in the Chase National Bank with power to sign all necessary documents on behalf of the Corporation.

KL BR Duplicate original of certificate dated December 29, 1945 of a resolution adopted at a general meeting of stockholders of Ramsey Scott held December 27, 1945 authorizing H. H. Klein as president and treasurer to open a bank account in the Royal Bank of Canada at its head office in Montreal and to sign all necessary documents in connection therewith.

KL BR Original certificate dated February 4, 1946 of a resolution adopted at a general meeting of stockholders of Ramsey Scott held February 2, 1946 authorizing H. H. Klein as president and treas-

urer to open bank accounts on behalf of Ramsey Scott in Havana, Cuba or elsewhere and designating the Canadian Bank of Commerce, head office Montreal, Canada or its agencies throughout the world as depositories of the funds of Ramsey Scott and authorizing H. H. Klein as president and treasurer to sign all necessary documents in connection therewith.

KL BR — Duplicate original of certificate dated January 28, 1947 of a resolution adopted at a meeting of the board of directors of Ramsey Scott held December 31, 1946 authorizing H. H. Klein to be the authorized signature of the Corporation and to open and maintain bank accounts in its behalf anywhere throughout the world; also designating the Bank of Nova Scotia, head office Montreal, Canada, or any of its agencies throughout the world as depositories of the funds of Ramsey Scott and authorizing H. H. Klein as authorized signature to sign any and all documents in connection therewith.

KL BY — Certificate of incorporation of John Dunbar & Co. Inc. showing its incorporation at Havana, Cuba on March 13, 1944.

KL CD — Certificate of incorporation of Exportadora de la Costa, S. A., showing incorporation of that Company at Havana, Cuba on October 11, 1945.

KL CE — Certificate dated December 29, 1945 of a resolution adopted at a general meeting of stock-

holders of Exportadora de la Costa, S. A., held December 27, 1945 authorizing the opening of an account at the Chase National Bank at any of its branches in the City of New York and authorizing H. H. Klein as president and treasurer to sign any documents and transact any business on behalf of the corporation in connection therewith.

L CF Duplicate original certificate dated December 29, 1945 of a resolution adopted at a general meeting of stockholders of Exportadora de la Costa, S. A., held December 27, 1945 authorizing the opening of a bank account at the Royal Bank of Canada at its head office in Montreal or in any of its agencies throughout the world and authorizing H. H. Klein as president and treasurer to sign any documents or transact any business on behalf of the corporation in connection therewith.

XL CL Certified copy of certificate of incorporation of Exportadora Kent, S. A., showing the incorporation of that Company at Havana, Cuba on July 3, 1945.

XL CQ Duplicate original certificate dated October 11, 1945 of a resolution adopted at a meeting of the board of directors of Exportadora Kent, S. A., held October 11, 1945 authorizing the opening of a bank account at the Royal Bank of Canada at its head office in Montreal or at any of its

agencies throughout the world and authorizing H. H. Klein as president and treasurer to sign any documents and transact any business on behalf of the Company in connection therewith.

KL CR Duplicate original of certificate dated December 28, 1945 of a resolution adopted at a meeting of the board of directors of Exportadora Kent, S. A., held December 28, 1945 designating the Chase National Bank of New York the depositary of the funds of Exportadora Kent, S. A., and authorizing Ellis Rosenberg as treasurer to sign any documents and transact any business on behalf of the Company in connection therewith.

KL CS Duplicate original letter dated October 12, 1945 from Exportadora Kent, S. A., to H. Harvey Co. Ltd., Baltimore, Maryland, permitting the latter to communicate directly with John Dunbar & Co. Ltd. in Vancouver, B. C., in connection with Dunbar's Blended Canadian Whiskey.

KL CT Duplicate original letter dated October 12, 1945 from Exportadora Kent, S. A., to John Dunbar & Co. Ltd., Vancouver, B. C., advising that Exportadora Kent had informed H. Harvey Co. Ltd. that the latter might communicate directly with John Dunbar as to all matters relating to shipments of Dunbar's Blended Canadian Whiskey in order to save time and avoid delay.

scription of Defendants' Exhibits Remaining in Evidence

L CU Original letter dated October 19, 1945 from John Dunbar & Co. Ltd. to Exportadora Kent, S. A., acknowledging receipt of Exportadora Kent's letter which has just been described.

L CX Certified copy of resolution adopted at a meeting of the board of directors of Financiera Lloyds, S. A., held April 16, 1945 authorizing the opening of a bank account at the Chase National Bank, New York.

L CY Certificate dated February 2, 1946 of a resolution adopted by the board of directors of Financiera Lloyds, S. A., at a meeting held December 27, 1945 authorizing H. H. Klein as president and treasurer to sell, pledge, hypothecate, endorse, sign, transfer or otherwise dispose of any and all real estate, stocks, bonds, securities and choses in action and assets of the Company.

L DE2 Certificate of incorporation of Angus Kirby & Co. Exporters Inc. showing the incorporation of that Company on June 30, 1944.

L DK Certificate of incorporation of Financiera Lloyds, S. A., showing the incorporation of that Company at Havana, Cuba on April 13, 1945.

L DQ Photostatic copy of jeopardy assessment against H. Harvey Co. Ltd. dated March 3, 1948 assessing $313,259.19 for the year 1944; $47,627.85 for the year 1945; $679,417.53 for the year 1946.

Description of Defendants' Exhibits Remaining in Evidence

KL DR Jeopardy assessment against H. H. Klein dated March 3, 1948 assessing $540,798.25 for the year 1944; $2,528,325.04 for the year 1945 and $2,492,077.76 for the year 1946.

KL DS Jeopardy assessment against Mrs. Gertrude Klein dated March 3, 1948 assessing $38,875.52 for the year 1944; $230,070.28 for the year 1945; and $223,525.32 for the year 1946.

KL DT Ninety day letter dated March 10, 1948 from the Treasury Department, Internal Revenue Service, to H. Harvey Co. Ltd. giving notice of the claimed deficiencies in its income tax liability for the taxable years ended December 31, 1945 and December 31, 1946, and enclosing computation of the claimed tax liability.

KL DU Ninety day letter dated March 10, 1948 from the Treasury Department, Internal Revenue Service, to Mr. H. H. Klein claiming a deficiency for the years 1944, 1945 and 1946 of $3,485,255.99 and a penalty of $1,742,628.

KL DV Ninety day letter dated March 10, 1948 from the Treasury Department, Internal Revenue Service, to Mrs. Gertrude Klein claiming a tax deficiency for the years 1944, 1945 and 1946 of $450,212.58.

KL DW Check dated January 22, 1947 in the amount of $628,440. drawn to the order of the Seaboard Syndicate, S. A., on the Royal Bank of Canada, Montreal Branch, signed by H. H. Klein and bearing the endorsement "For deposit only to the credit of the Seaboard Syndicate, S. A.".

KL DX	Photostatic copy of check dated October 9, 1945 in the amount of $150 drawn by William Rokoff to the order of Tivoli Trading Co., S. A., bearing the endorsement "For deposit only to account of Tivoli Trading Co., S. A." and bearing the stamp "Pay to the order of any bank or banker prior endorsements guaranteed, November 20, 1945 The Royal Bank of Canada, New York City, Norman G. Hart and Edward C. Holahan".
KL DY	Original receipt for $150 reading "Received from Tivoli Trading Co., S. A., $150 (repeat) re payment in full for subscription to Capital Stock, said subscription having been cancelled. Signed William Rokoff."
AL EG	Check dated October 3, 1945 from Morris O. Alprin to Tivoli Trading Co., S. A., in the amount of $500.
RO EH	Check dated September 25, 1945 to the order of Tivoli Trading Co., S. A., in the amount of $1,000 signed by Albert Roer, drawn on the Bank of the Manhattan Company, 4622 Thirteenth Avenue, Brooklyn, N. Y., bearing the endorsement "For deposit only to account of Tivoli Trading Co., S. A." and bearing a stamp showing clearance on November 20, 1945.
AL EI AL EJ AL EK AL EL	English translations of the certificates of incorporation of Aguila, Economica, Apolo and Marte, respectively, all dated June 29, 1946.

[7359] New York, July 27, 1955
10:30 o'clock a.m.

(Trial resumed; jury present.)

The Court: You may proceed.
Mr. Kiendl: I will call Mr. Browne.

RALPH ALEXANDER BROWNE, called as a witness by the defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Kiendl:

Q. Mr. Browne, what is your occupation? A. I am chief auditor, sir, of the Royal Bank of Canada.

Q. The New York agency? A. New York agency.

Q. Here on William Street? A. 68 William Street, sir.

Q. How long have you been chief auditor? A. Three years.

Q. Prior to that time were you in their employ for some years? A. Yes, sir.

[7360] Q. Were you in their employ during the years 1944, 1945, 1946 and 1947? A. Yes, sir.

Q. I have never met you at any time, so far as I know. A. No, sir.

Q. You have talked to Mr. Meagher, my assistant? A. Yes, sir.

Q. And you understand I represent the defendant H. H. Klein in this case? A. Yes, sir.

Q. Mr. Browne, in the performance of your duties in 1944 to 1947, inclusive, did you have any duties of keeping a record of any process that was served on that institution for the production of its books and records regarding any of its customers? A. In a way, sir, not fully.

Q. Not fully? A. No.

Q. Did you keep a record of processes served by court order or otherwise, administrative agencies? A. Some I entered in the records and some others were entered by somebody else.

Q. Have you that record with you? A. I have.

[7361] Q. Did you know that among the customers of the bank in those years, 1944, 1945, 1946 and 1947, there were certain companies, Cuban and Panamanian, with which Mr. H. H. Klein was connected? A. Could you repeat that question, please?

Mr. Kiendl: Read the question, please.

(Question read.)

A. Yes.

Q. Does your records show what court or agency process was served on the bank regarding any of those companies? A. Yes, sir.

Q. Will you look at your records, if you have them with you, Mr. Browne, and tell us when for the first time these summonses were served on the bank for the production of its records. A. September 18, 1946.

Q. September 18, 1946? A. Yes, sir.

Q. Was that an Internal Revenue subpoena or an OPA subpoena or what was it? A. OPA subpoena.

Q. It was an OPA subpoena? A. Yes, sir.

[7361a] Q. Have you a copy of that subpoena in your file? A. Yes, sir.

Q. May I see it? A. Yes (handing).

[7362] Q. Is this it that I now show you, subpoena duces tecum? A. I understand it is it, sir.

Mr. Kiendl: I offer it in evidence.

Mr. Bauman: (After a lapse) Will the Court bear with me for just one moment?

The Government has no objection, your Honor.

Mr. Bender: The defendant Haas has no objection, your Honor.

Mr. Donohue: The defendant Alprin has no objection, your Honor.

(Marked Defendant Klein's Exhibit EO.)

Mr. Kiendl: Just the subpoena.

The Clerk: Yes.

Mr. Kiendl: May I call the jury's attention to it, your Honor?

The Court: Yes.

Mr. Kiendl: This is a subpoena duces tecum, United States of America, Office of Price Administration. It is addressed to Mr. Holahan, the Agent of the Royal Bank of Canada, New York Agency, at 68 William Street and it says that "At the instance of the Price Administrator, Office of Price Administration, you are hereby required to appear . . ." (reading).

(After conferring with Mr. Bauman) And it [7363] will be conceded that Mr. Raymond L.

Brewster, the accountant who signed that certificate, is a man who was a witness in this case whose testimony was stricken out at the end of the Government's case.

By Mr. Kiendl:

Q. Now after the service of that subpoena dated September 16th served on September 18th, was there any other process served on the bank regarding those accounts? A. Yes, sir.

Q. What was the next one? A. February the 18th, 1947, a warrant of attachment by the O. P. A.

Q. And have you a copy of that warrant of attachment? A. I think so.

[7304] Mr. Kiendl: I offer it in evidence.

Mr. Bauman: Your Honor, the Government objects to the introduction of that exhibit on the grounds that it is completely immaterial and has no bearing on those facts charged in the fifth count; that it seems to me prefatory to relitigating a matter which is not part of this litigation, and which has not, up until now, been discussed or permitted to be relitigated.

Mr. Kiendl: In view of the Government's objection, we withdraw the offer.

Q. Mr. Browne, after the service of the warrant of attachment that you told us about in February—was it in February 1947? A. Yes.

Q. What was the next process that was served? A. My record shows we were subpoenaed on March 17, 1947, but I have not been able to locate the document.

Q. Do you know whether that was an OPA subpoena or an Internal Revenue subpoena? A. I can say it was an OPA subpoena, knowing when the first subpoena was given by the Internal Revenue; that is the only way I can tell you.

[7365] Q. You know it was an OPA subpoena? A. I know it was.

Q. Then later on was there a subpoena served by the Internal Revenue Department? A. Yes, sir.

Q. When was the first one of those served? A. According to the records, June 16, 1947.

Q. Were there any after that? A. Yes, sir.

Q. When? A. June 18, 1947, July 14, 1947, July 15, 1947.

Q. Have you those four subpoenas: June 16, 1947, June 18, 1947, July 14, 1947 and July 15, 1947? A. I have June 16, 1947, June 18, 1947 and July 15, 1947.

Q. May I have them? A. Yes (handing).

Q. You haven't the one of July 15, 1947? A. It should be there.

Q. I beg your pardon. You haven't July 14, 1947? A. You have the 15th and not the 14th.

Q. You haven't got the 14th? A. I haven't got it.

Mr. Kiendl: I offer them in evidence as one exhibit.

[7366] Mr. Bauman: May I ask the witness a preliminary question or some preliminary questions with reference to these exhibits?

The Court: Surely.

By Mr. Bauman:

Q. I call your attention to the one dated June 16, 1947, Mr. Browne. Do you remember whether or not this pencil writing was on it before? A. No, I don't. I don't know whether it was on there before, but I suppose it was put on there to call Mr. English, as Mr. Victory wasn't in, in case there was any information.

Q. I notice two names crossed out on this subpoena, and a series of check-marks. Do you know the circumstances under which that was done? If you know, please tell us, and if you don't, please do not speculate. A. No.

Q. With respect to the subpoena dated July 15, 1947, do you know when and under what circumstances the last three names were added? A. No, sir.

Q. These cross-marks in red pencil dots were not on them when this was received at the bank? [7367] A. No; they are my marks to show we had the accounts.

Mr. Bauman: I have no objection with the exception of any pencil notations, your Honor, dots, checks or other marks that appear.

Mr. Kiendl: We are glad to offer the exhibits without them.

Mr. Donohue: I have no objection on behalf of the defendant Alprin.

Mr. Bender: I have no objection on behalf of the defendant Haas.

(Defendant Klein's Exhibit EP received in evidence.)

[7368] Mr. Kiendl: These, ladies and gentlemen, are three subpoenas, one dated June 16, 1947, one dated June 18, 1947, the last one dated July 15, 1947. They are all headed "Summons to Appear to Testify and to Produce Books, et cetera."

The first one reads (reading).

I am not reading every word of it, Mr. Bauman.

(Mr. Bauman nods.)

(Mr. Kiendl continues reading.)

Mr. Kiendl: And on the back are some excerpts from the Internal Revenue Code that I won't read and the list of business enterprises listed (reading).

The second subpoena dated June 18, 1947 is like unto it and has a list attached with two stricken out and the first one is Exportadora Kent and United Distillers of Canada is the second eliminated. The rest are the same.

The third subpoena is like unto the first but it has a long list of companies. Here they are (reading).

Written in—(to Mr. Bauman) I don't know whether that is eliminated or not. Do you want it in or out?

[7369] Mr. Bauman: Well, it is there. I suppose you might as well read it.

(Mr. Kiendl continues reading.)

By Mr. Kiendl:

Q. Does that, Mr. Browne, complete the list of the records that you have? A. No, sir.

Q. Showing the service of attachments? A. No, sir.
Q. And subpoenas up to that time. A. To that time.

Mr. Kiendl: You may cross-examine.

Mr. Bauman: In the defense witnesses, does your Honor wish me to cross-examine after the defense counsel or does your Honor want me to proceed now?

The Court: No, I feel you should cross-examine.

Mr. Bauman: All right.

Cross-Examination By Mr. Bauman:

Q. Mr. Browne, I understand that you are now the chief auditor of the Royal Bank in New York, is that correct, sir? A. That is right.

Q. How long have you been employed by the bank altogether? A. 39 years.

[7370] Q. During the period of 1946 and 1947, as I understand what you said on direct examination, you kept a certain record with relation to subpoenas that were served on the Royal Bank in New York, is that right? A. I said more or less.

Q. I am coming to that. You more or less kept a record? A. Yes.

Q. And by that you mean on occasion the record was kept by people other than yourself, is that right? A. That's right.

Q. And will you tell me, please, what that record purports to be? A. Well, we have a little book in which all subpoenas, attachments, et cetera, are supposed to be entered in as they represent and they are handled by that

officer who handles that service and when they are through they are filed in a regular file in the files.

Q. And when you say that is a book in which subpoenas are entered, we are talking about those subpoenas with the force of law? A. Yes.

Q. Which call upon the bank to produce certain papers, is that correct? A. That is correct, sir.

[7371] Q. So that if a Government agency sends you a written request rather than a subpoena it would not be in that book, is that right? A. With one exception where the letter followed a subpoena asking for additional information that would get entered.

Q. Yes, but if the letter preceded the subpoena? A. I couldn't say to that, sir, because I didn't enter them all up. If I was entering them, I would enter them.

Q. The other people to the best of your knowledge would just have entered the subpoena, is that correct? A. Yes, that is correct.

Q. And not written requests as such? A. That is correct.

Q. And that is the book which I think you have told us several times merely consisted of the entry of subpoenas, is that right? A. Yes—and attachments.

Q. Subpoenas and attachments. In other words, Mr. Browne, as I understand it, papers having the force and sanction of court process, is that correct? A. That is correct.

Q. For instance if I, in my present capacity, [7372] were to call your bank at this period and ask you over the telephone for something, that would not appear in that book, is that right? A. You wouldn't get an answer. It would not be entered.

The Court: Mr. Browne, do you know Mr. Bauman's present capacity?

The Witness: I do not, sir.

Q. Well you know, do you not, that I am trying this case for the Government? A. I know that.

Q. And you have previously during the course of the last few months spoken to representatives of the United States Attorney, have you not? A. Oh, yes.

Q. And I believe I met you on one occasion in the office of the United States Attorney previously, did I not? A. Yes.

Q. So that you know I have some connection with the Government? A. Oh, yes. What your official capacity is I don't know as yet, sir.

The Court: (After a pause.) It looks like you are not going to find out. Nobody seems inclined to tell you. Well, I will tell you. Mr. Bauman is an [7373] Assistant United States Attorney.

The Witness: Thank you.

Q. Well, I think you rather assumed that? A. I assumed that.

(Laughter.)

Q. Now you talked about the service of a warrant of attachment, is that right? A. Yes, sir.

Q. And do you know whether or not at the time that warrant of attachment was served there was nothing there to attach? Do you know that? A. I don't know that.

Q. You don't know that. Do you know when it was—withdrawn.

Do you know of your own knowledge, Mr. Browne, whether it was before or after the service of that subpoena? A. Which one, sir?

Q. Of the 18th by the O. P. A., the first one about which you were interrogated. A. September 18th?

Mr. Bauman: (To Mr. Kiendl) May I see it?

Mr. Kiendl: Surely (handing).

Q. That is Defendant Klein's 120. A. That is the first one.

[7374] Q. Do you know whether it was before or after the service of that subpoena, Mr. Browne, that Mr. Brewster of the O. P. A. first appeared in your bank and asked for the production of bank records in this connection? A. I don't know, sir.

Q. You don't know of your own knowledge? A. No, sir.

Mr. Bauman: All right, sir.

The Court: Any cross?

Mr. Bauman: May I see the——

The Court: Oh, I am sorry. I thought you were finished.

Mr. Bauman: I have about completed it, but I would like to glance at this book, if I may, and if the Court wishes—would your Honor give me a moment to look at this book, please?

The Court: Oh, sure.

[7375] Mr. Donohue: May I ask a question, your Honor?

Mr. Bender: Defendant Haas has no questions.

The Court: I don't believe Mr. Bauman has concluded yet.

Mr. Donohue: I am sorry.

By Mr. Bauman:

Q. Mr. Browne, that September 18th subpoena to which you just referred and about which you testified, is, so far as I can see, the only entry that is written in in pencil in that book; is that correct? A. That's correct.

Q. Do you remember when that entry was made? A. It is this year.

Q. This year? A. The early part of this year.

Q. That subpoena was served in 1947? A. Yes, that's right.

Q. It was entered in that book in 1955? A. I put that in for a record because I didn't have that subpoena.

Q. I didn't ask you that. It was received in [7376] 1947 and it was entered in 1955? A. That's right.

Q. I beg your pardon. Mr. Tyler points out that the subpoena was received in 1946. A. That's right.

Q. Nine years later, roughly, it was entered in that book? A. That's correct.

Q. And that is the basis for your recollection, Mr. Browne, in testifying with relation to that? A. No. This year is my recollection.

Q. That and the exhibit; is that correct? A. Yes.

Mr. Bauman: That is all.

By Mr. Donohue:

Q. Will you take a look at the first sheet of what purports to be a legal document in the case or in the matter of the application of Paul Porter, Price Administrator, Office of Price Administration, for an order compelling Edward C. Holohan, Agent, Royal Bank of Canada, New York City Agency, and let me ask you if you know Mr. Holohan, whose name appears on that document. A. Yes, sir.

[7377] Q. Who is Mr. Holohan? A. At that time he was our chief agent in the New York agency of the Royal Bank of Canada. He has since retired.

Q. When did he retire? A. In the last few years. I can't say definitely.

Q. In the last few years? A. Yes.

Q. You knew him during the years 1944, 1945, 1946 and 1947? A. Yes.

Q. Did you know he was subpoenaed here as a witness and testified for the United States in the proceeding? A. Yes.

Q. Did you discuss the fact that he had testified with him after his testimony? A. I haven't seen him.

Q. But you did know he appeared here as a witness for the United States? A. That is what I heard in the office.

Q. Did you know that when he was here as a witness he was asked concerning the nature of a subpoena [7378] which had been served upon the bank in 1946? A. No, sir.

Q. When did you discuss this matter with Mr. Bauman? A. This matter here?

Q. Yes. A. This morning.

Q. You had not seen Mr. Bauman before this morning? A. I had seen him.

Q. Where? A. Sometime this year.

Q. Where did you see him? A. In this courthouse.

Q. Who was present when you saw Mr. Bauman in this courthouse? A. Mr. Tyler.

Q. Anybody else? A. There was, but I couldn't say who they were.

Q. What is the best recollection you have as to when it was that you saw Mr. Bauman and Mr. Tyler? A. It was in the first three months of this year.

Q. Would you say it was prior to the 4th of April of this year? [7379] A. That I couldn't say. I couldn't recollect.

Q. When you saw Mr. Bauman and Mr. Tyler in this building in the first three months of this year, did you have any papers with you? A. Yes, sir.

Q. What papers did you have with you? A. Correspondence.

Q. Did you have the papers you have brought here to court this morning? A. No, sir.

Q. What correspondence did you have? A. General correspondence, relative to these different companies.

Q. Did you discuss with Mr. Bauman or Mr. Tyler or both of them the subpoenas which had been issued against these companies? A. Not at that time, sir.

Q. Not at that time? A. No, sir.

Q. Did you at any time? A. Yes, sir.

Q. When? A. The first part of this year.

Q. The first part of this year you discussed [7380] with Mr. Bauman—— A. Not with Mr. Bauman.

Q. With whom? A. Mr. Anderson and Mr. Donaldson, Internal Revenue agents.

Q. Where was this conversation had? A. In my own office.

Q. Who were the gentlemen who discussed the matter with you? A. Mr. Anderson and Mr. Donaldson.

Q. Mr. Donaldson? A. Yes.

Q. Did you know that Mr. Donaldson appeared and testified in this court as a witness for the United States? A. No, sir.

Q. You discussed this matter with Mr. Anderson and Mr. Donaldson. At that time did you exhibit these subpoenas that you brought here to the court this morning? A. No, sir.

Q. Did you discuss them? A. I discussed one.

Q. What one did you discuss? [7381] A. That was the one I didn't have the record of. In fact, they brought it to my attention.

Q. How did that come about, Mr. Browne? A. In the course of going through the records, they mentioned to me "When were you first subpoenaed?"

I said, "I can't tell you offhand. I would have to look at the records."

So I looked at my records.

Q. What records did you look at? A. This one here.

Q. May I see it? A. Yes, surely (handing).

Mr. Bauman: Could I ask that that be marked for identification. There has been a great deal of testimony about it.

The Court: Yes. As whose exhibit?

Mr. Bauman: I ask that it be marked as a Government exhibit.

(Government's Exhibit 407 marked for identification.)

Q. This conversation, Mr. Browne, about which you are testifying, took place in your office in the bank? A. Yes, sir.

[7382] Q. Mr. Anderson and Mr. Donaldson of the Bureau of Internal Revenue were the persons who were discussing the matter with you? A. Yes, sir.

Q. Can you fix in your mind the time, the month, perhaps, to begin with, when this conversation took place? A. No, I couldn't definitely because they were there in January and March and April.

Q. Then Mr. Donaldson and Mr. Anderson were in your office in January, March and April of 1955? A. That is my recollection.

Q. And on one occasion you made reference to this book? A. No, I didn't make reference to it, sir. The records came up in this way: In due course this came to trial, I should have all my records, which would include these subpoenas.

Q. Did they tell you it should include the subpoenas? A. No, but I said to myself I got to get my subpoenas if I have got to have every record, which up to that time I had not been getting out. They mention to me what was my first one, and according to [7383] that book you can see which was the first one, according to my records.

Q. They mentioned to you what was the first one. What do you mean? The first one what? A. The first subpoena by the OPA.

Q. Then you were asked by either Mr. Anderson or Mr. Donaldson when the first OPA subpoena was served on the bank? A. Right.

Q. When did they ask you that question? A. That I cannot say definitely. It was the early part of this year.

Q. You made reference to this book to answer that question? A. That's right.

Q. And what did you tell them after having made reference to that book? A. The first was a warrant of attachment on February 18th.

The Court: What year?

The Witness: 1947, your Honor.

Q. February 18, 1947. A. Right.

Q. Did you have any occasion to tell them, while [7384] they were there on any one of these occasions, that there had been a subpoena served on the bank in 1946? A. No, sir. They told me.

Q. Tell us about that. What did they say to you? A. They said, "You were subpoenaed early before that."

I said that my records showed February 18, 1947 as the first one.

Q. When they told you that you had been served with a subpoena before that did they have any document or paper in their hand? A. As I recollect it, not that day.

Q. Did they on any day? A. The next day they showed me a copy of the subpoena.

Q. A copy of which subpoena? A. The first one, September 18, 1946.

The Court: Defendant Klein's EO.

Q. Do I understand that prior to this trial, prior to the 4th day of April, in your office in the bank you were served or you were exhibited by which of the two agents, Mr. Donaldson or Mr. Anderson? [7385] A. Mr. Anderson.

Q. With a copy of what has been offered by Mr. Kiendl in evidence as the Defendant Klein's EO, and would you take a look at it to make sure? A. I can't recollect the exact document, but that is what I worked from, I went off the subpoena. I can't recollect now if it was exact as that one.

Q. A moment ago you said they told you there had been a subpoena issued prior to 1947, and that on a subsequent visit they exhibited to you a copy of the first subpoena? A. Yes.

Q. Is that the first subpoena? A. That is the first subpoena.

Q. That is a copy or what you were exhibited was a copy of that document you now have in your hand? A. I wouldn't say definitely, no.

Q. You wouldn't say definitely. Would you say definitely yes? A. I wouldn't say. Whatever they showed me and the date they showed me was the day they went to look for that subpoena on that date.

Q. You went to look for a subpoena on what date? A. The subpoena that was issued to us on [7386] September 18, 1946.

Q. 1946? A. Yes.

Q. You exhibited here this morning, under subpoena from Mr. Kiendl, this as the subpoena issued September 18, 1946 (indicating)? A. That's right.

Mr. Donohue: I have no further questions.

Redirect Examination by Mr. Kiendl:

Q. Mr. Browne, after you made a search for the subpoena of September 16, 1946, that was served on your agency on September 18, 1946, did you find it? A. No, sir.

Q. You found a copy of it, didn't you? A. No.

Q. You got a copy of it, didn't you? A. Yes, sir.

Q. You got a copy of it from whom? A. Our solicitor.

Q. Who is your solicitor? The Dewey firm, as it is now known? A. Yes, sir.

Q. And the Root, Clark firm as it was known formerly? [7387] A. Yes, sir.

Q. They produced a copy of this subpoena, attached to this document? A. Yes, together with the letter attached to it.

Q. Have you seen Mr. Anderson or Mr. Donaldson since the time they told you about the service of an OPA subpoena on September 18, 1946? A. Yes, sir.

Q. By the way, are they in court now, either of them? A. Yes, sir.

Mr. Kiendl: Will Mr. Donaldson and Mr. Anderson please stand up.

(Two men stand up in the courtroom.)

Q. Are those the two gentlemen you referred to, Mr. Browne? A. Yes, sir.

Q. You saw them on at least three occasions during the first part of this year? A. More than that.

Q. Many times? A. Many times.

Q. And you have been to the United States [7388] Attorney's office? A. Yes, sir.

Q. More than once or only once? A. Two or three times.

Q. You went over your books and records of your institution with Mr. Anderson and with Mr. Donaldson and with the United States Attorney's office? A. Yes, sir.

Q. And the only information that you ever received from any source regarding the service of any subpoena by the OPA, the first one was the one dated September 16, served September 18, according to the copy or stamp of return on it? A. Yes.

[7389] Q. You never met Mr. Brewster? A. No, sir.

Mr. Kiendl: That is all.

Mr. Bender: No questions.

Mr. Donohue: I have no further questions.

Recross examination by Mr. Bauman:

Q. Is Government's Exhibit 407 for identification a book which was kept by you at the Royal Bank of Canada? A. Not kept by me, no, sir.

Q. Were you one who made entries in that book? A. Yes.

Q. You are familiar with that book, are you not? A. More or less.

Q. You are familiar with books of that type which are kept in the usual course of business by the Royal Bank of Canada, New York branch, is that right? A. That's right.

Q. Is that exhibit on the table before you a record kept in the usual course of business by the Royal Bank of Canada, New York Agency? A. That's right.

Mr. Bauman: I offer it in evidence.

Mr. Kiendl: We have no objection.

Mr. Donohue: May I look at it? It was utilized for the purpose of refreshing the witness' [7390] recollection. I don't know what else is in this book. It may not concern this matter at all. I would like to take a look at it. I hope, if your Honor please, that this is admitted only with respect to entries pertinent to this case, because there are a lot of entries referring to attachments against other people whose names certainly ought not be in this record.

Mr. Bauman: I will limit my offer to that extent.

The Court: Mr. Browne, will you look at that book. Are the pages numbered?

Mr. Donohue: No, your Honor, but there are attachments against other persons.

The Court: Mr. Browne, will you point out the particular page that you had reference to, that you referred to this morning, the particular page or pages.

Mr. Bauman: Do you mind if I look on, your Honor?

The Court: That is all right.

The Witness: Your Honor, this is the page here. That is where I entered in pencil (indicating).

The Court: That is the only page you referred to in refreshing your recollection about any documents you referred to this morning?

[7391] The Witness: No, sir.

The Court: Will you point out the pages that you did refer to.

Mr. Kiendl: Could I look at it now, too, your Honor, so I won't have to look at it later on and delay things?

The Court: Surely.

Mr. Browne, will you put a clip on each page, please.

Mr. Bauman: Your Honor, I am not offering that part of the 1954 record and thereafter, I am merely offering that part about which Mr. Kiendl interrogated.

The Court: We are just going to mark those pages on which he puts clips.

Mr. Kiendl: If it is restricted to that, that is entirely agreeable.

The Court: Did you put a clip on each page that you referred to, Mr. Browne?

The Witness: Not yet, sir.

I have now, your Honor.

The Court: All right.

Mr. Donohue: I have no objection.

The Court: These pages will be received [7392] in evidence as Government's Exhibit 407. The Government will supply photostatic copies of those pages.

Mr. Bender: The defendant Haas has no objection.

(Government's Exhibit 407 for identification received in evidence.)

The Court: There will be a ten-minute recess.

(Short recess.)

By Mr. Bauman:

Q. Mr. Browne, I call your attention on the page of Government's Exhibit 407 in evidence to the pencil notation dated September 18th, 1946. You made that entry, did you not, after it had been called to your attention by Mr. Donaldson and Mr. Anderson that such a subpoena existed and you received such a subpoena from the law firm, is that correct? A. That is correct.

Q. That is when you made that entry? A. That is right.

Mr. Bauman: That is all.

Redirect Examination by Mr. Kiendl:

Q. Now, Mr. Browne, can you tell us the pages that are in evidence here which particular entries on [7393] these pages you referred to to refresh your recollection? A. Yes, sir.

Q. You have marked the pages with clips. A. That is right.

Q. Now there are no entries that you have marked with a clip prior to the September 18th pencil entry, is there? A. There is not, sir.

Q. So that the first entry that you referred to refresh your recollection from this book is the pencil entry that Mr. Bauman just asked you about? A. That is correct, sir.

Q. And that is the entry that reads, in pencil, "September 18 46"—will you read it to me? It is your handwriting. A. Dated September 16th, "O. P. A. on R. C. Williams & Company . . . (after a pause) information . . . and lawyer's fee held by them."

Q. "And lawyer's fee held by them"? A. No. "Information from our lawyer; subpoena held by them."

Q. Just read this again. "Information from our lawyer; subpoena held by them"? A. Yes.

Q. I see. Now you made that entry after Mr. [7394] Anderson and Mr. Donaldson had told you that the first subpoena that was served on you was dated September 16th? A. That is correct, sir.

Q. And served on September 18th? A. That is correct, sir.

Q. And in accordance with your recollection you went to see your lawyers? A. I called them on the telephone.

Q. And you went over and you finally got a copy of the subpoena? A. They forwarded it to me by mail.

Q. And then did you make an entry in this book in pencil? A. No, sir.

Q. Did you make it later? A. No, sir, it had already been made, sir. I made no further entries in the book.

Q. You made that entry the date that Mr. Anderson and Mr. Donaldson told you that such a subpoena had been served, or did you make it after you had verified it with your lawyers, Root, Clark? Or don't you know? A. I don't know, sir.

Q. Well now, the next entry in the book you refer to is the entry under date of February 18th, warrant of attachment of The Temporary Control Administrator [7394] against Williams? A. That is correct, sir.

Q. And those are the only two entries on that page that you referred to? A. That is correct, sir.

Q. Now the next one you have marked is a page which has an entry under date of March 17, 1947? A. Correct, sir.

Q. That is a subpoena in the District Court of the United States? A. Yes, sir.

Q. Regarding Agencias and Ramsey Scott? A. Yes, sir.

Q. And that is the only entry on that page; all the other entries—— A. No.

Q. There is one more on that page? A. There are two more.

Q. Two more. All the other entries after that, the entries of June 6th, June 10th have no application to this situation? A. They pertain to different companies.

Q. The last two entries on the page are with respect to the summonses that you referred to? A. Yes, sir.

Q. Entered under date of June 16th and June 18th? A. June 18th, that is correct.

[7396] Q. Now on the next page that you have marked—— A. July the 15th.

Q. There is one July 14th, too, isn't there? A. There are two on that page.

Q. Two on that page, July 14th and July 15th? A. Yes.

Q. Now on the next page? A. July the 22nd. That is the only one on that page.

Q. That is the only one on that page? A. Yes.

Q. And that is all? A. That's all that you wanted that is in there.

Mr. Kiendl: That's all, Mr. Bauman.
Thank you.

Recross-Examination By Mr. Bauman:

Q. When Mr. Anderson came down to see you on that day he didn't tell you that that was the first subpoena that he had served, did he? A. Would you please repeat that question.

Q. I say when Mr. Anderson appeared at your offices on that day he didn't tell you that that subpoena was the first subpoena that had been served, did he? A. He didn't say that was the first one. He said, "You have one before that."

[7397] Mr. Bauman: That is all.
Mr. Kiendl: That is all Mr. Browne.
We call Mr. Hyman Harvey Klein.

HYMAN HARVEY KLEIN, one of the defendants, called as a witness on his own behalf, testified as follows:

Direct Examination By Mr. Kiendl:

Q. Mr. Klein you are the Hyman Harvey Klein who is named in the indictment that was returned by a grand jury in this case in May, May 13, 1954? A. Yes, sir.

Q. And thereafter another indictment against the same defendants substantially in September of 1954? A. Yes, sir.

Q. And where do you live, Mr. Klein? A. Los Angeles.

Q. And how long have you lived there? A. Since 1951. I think sometime early in the year my family moved out there.

Q. And prior to that time you lived in Baltimore? A. Baltimore, Maryland.

Q. And prior to that you lived in Canada? A. Vancouver, B. C.

[7398] Q. Vancouver. Now you are generally familiar with the fact that the indictment in this case originally contained five counts, the consolidated indictment? A. Yes, sir.

Q. And that you have been acquitted by action of this Court on four counts and there is only one remaining? A. Yes.

Q. Now I want to call your attention particularly to the count that remains which we call count 5 of the indictment. That count alleges: The grand jury charges that from on or about June 1, 1946, you and certain other defendants and certain named co-conspirators and divers other persons conspired to do certain things. You are generally familiar with that? A. Yes, sir.

Q. Now, I want to run over the list of the defendants and ask you to identify them and tell us who they are. The first one is yourself. The second one is Isidor J. Klein. Who is he? A. My late brother.

Q. And is he the brother who died during the course of this trial, Mr. Klein? A. Yes, sir.

Q. And the second one is Mr. Albert McLennan. [7399] A. An associate.

Q. Who is he? A. A partner or rather stockholder in United Distillers of Canada, Ltd., and a president presently of that company.

Q. The next one is George Norgan. Who is he? A. A director of United Distillers of Canada, Ltd.

Q. The next one is Mr. Ellis Rosenberg. A. A former attorney who acted for me in the foreign companies.

Q. Who acted for you what? A. Who acted for me personally in connection with the operation of the foreign companies.

Q. And he has died since the indictment was returned against you? A. Yes, sir.

Q. Maurice Haas. He is one of the defendants remaining on trial? A. Yes.

Q. And he was a tax accountant and a lawyer? A. Yes, sir. He acted in both capacities.

Q. Mr. Alprin, a lawyer? A. Yes, sir.

Q. Who is still on trial? A. Yes, sir.

Q. Now in addition to those six defendants in addition to yourself—seven altogether—there are three co-conspirators named. One is Irving A. Koerner. Is he the gentleman who was a defendant in this case [7400] until recently? A. Yes.

Q. Mr. William Rokoff, is he the gentleman who testified in this case at some length? A. Yes, sir.

Q. And Mr. Harry Silver, who is he? A. A former employee of the H. Harvey Company, an officer.

Q. Now I want to ask you categorically, Mr. Klein, whether or not at any time you conspired with any of the named defendants—with the named defendants and with the named co-conspirators whose names I have given you and with divers other persons, or with any of them, to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of income taxes? A. Emphatically no.

Q. Now does that include the period from on or about June 1st, 1946, down to the date of the indictment? A. It includes any period in my life.

Q. It includes your entire life? A. Yes, sir.

Q. Now it is alleged in the indictment that it was a part of the conspiracy that the defendants named in that [7401] indictment would conceal and continue to conceal the nature of their business activities and the source and nature of their income. I want to ask you if you at any time ever participated in any conspiracy with any defendants to conceal the nature of your business activities? A. Emphatically **no, sir.**

Q. Or of their business activities? A. No, sir.

Q. Or of the business activities of any one of those defendants? A. No, sir.

Q. And is the same thing true regarding the source and nature of their income? Did you at any time conspire with any defendant to conceal the source and nature of their income? A. No, sir.

Q. At any time? A. No, sir.

Q. Now it is also alleged in this indictment that it was a part of the conspiracy that the defendants named would file or cause to be filed with the District Director of Internal Revenue in Brooklyn an income tax return from Mr. Alprin and his wife. Did you at any time conspire with any defendant at any time to file or cause to be filed any return by Mr. Alprin and his wife? A. No, sir.

[7402] Q. It is also alleged in the indictment that it was part of the conspiracy that the defendants would file or cause to be filed similar income tax return from Mr. Koerner and his wife. Did you ever conspire with anybody to do any such thing? A. No, sir.

Q. It is also alleged in the indictment that it was a part of the conspiracy that similar income tax return would be filed for Mr. Roer and his wife. By the way, is Mr. Roer the man who was formerly a defendant in this case? A. Yes.

Q. Did you at any time conspire with any defendant named in the fifth count or anybody else to file or cause to be filed from Mr. Roer that income tax return alleged to be a part of the conspiracy? A. No, sir.

Q. Then it is alleged that it was a part of the conspiracy that the defendants would make and cause to be made entries in the Tivoli books to conceal the nature and source of income received by the defendants. Did you at any time conspire with anybody to do any such thing? A. No, sir.

[7403] Q. Mr. Klein, I don't think I asked you, you are a married man? A. Yes, sir.

Q. You have a child? A. One daughter.

Q. And about how old is she? A. She will be 23 in September.

Q. And you live with your wife and your daughter in Los Angeles? A. Yes.

Q. And you have for the period that you have told us about? A. Yes, sir.

Q. Now when did you first start doing business in Baltimore? A. In April of 1934.

Q. Prior to that time you had been in business in Canada? A. Yes, sir.

Q. In the wholesale liquor business? A. No; in the distilling industry.

Q. In the distilling industry? A. Yes, sir.

Q. And how long had you been in the distilling industry? [7404] A. Since 1925 approximately.

Q. And was that the beginning of your working period? A. No.

Q. Had you been engaged in any occupation before that, before 1925? A. Yes. I was in the financing business, the securities end of the financing business.

Q. For how long had you been in that? A. For a period of about five years on and off.

Q. Do I have it correct, Mr. Klein, that you were five years in some business before you went into the distillery business? A. Yes.

Q. Then you were in the distillery business from 1925 to 1934 in Canada? A. That's right.

Q. From 1934 on you were in business in Baltimore until this situation arose? A. Yes.

Q. Are you in this business now? A. In name only.

Q. And how long has that condition existed?—A. Ever since my jeopardy assessment of March 3, 1948.

[7405] Q. Now where was your business located in Baltimore? Where were your offices? A. In what period are you speaking of, sir?

Q. Well, since April 1934. A. At 2700 Wilmarco Avenue, where we had the United Distillers of America plant, and since June of 1945, when we sold the plant in question, at 10 Light Street.

Q. And is that in a building that was formerly known as the O'Sullivan Building? A. Now known as the Matherson Building.

Q. Now known as the Matherson Building.

Did there come a time after the service of the jeopardy assessments in March of 1948— A. March 3, 1948.

Q. March 3rd. Did there come a time prior to or after that where you considered having offices in New York City? A. Yes. Sometime in the spring of 1947. I think it was in May that I intended to move the executive offices of the H. Harvey Co. to New York City.

Q. And did you make any arrangements for any temporary office? A. Yes.

[7406] Q. Or temporary address in New York City? A. Yes, I used the temporary offices of the firm of Haas, Schlesinger & Mayers.

Q. And Haas, Schlesinger & Mayers, what business were they engaged in? A. They are a firm of accountants, and I believe that Mr. Haas is the only attorney in it as well as an accountant.

Q. Where were their offices located? A. 122 East 42nd Street, which would be on the corner of Lexington Avenue and 42nd Street.

Q. And did you use that office from time to time during that period? A. Yes.

Q. After the spring of 1947? A. Oh, quite often. As a matter of fact, I probably made use of it once a week for a number of months, and, as a matter of fact, my name is still up on the board. Since this trial started I took a walk up there and I took a look at the board, the bulletin board, and my name is still there.

Q. Was it there in 1947? A. Yes, sir

Q. And when you went to Baltimore it was about [7407] April of 1934? A. I had been there in December of 1933 but returned and spent about three months there or two months, and returned to Vancouver to bring my wife and daughter to Baltimore.

Q. And were you associated with the United Distillers of America from the time you started in Baltimore? A. It was formerly known as the Potomac Distilling Company and subsequently the named was changed to United Distillers of America, Ltd.

Q. Was the Potomac Distilling Company and the United Distillers of America both wholly-owned subsidiaries of the United Distillers of Canada? A. No. The Potomac Distilling Company was owned 50 percent by the United Distillers of Canada, Ltd. and 50 percent by another party whose name escapes me for a minute. But subsequently the United Distillers of Canada, Ltd. bought his interest and it became a wholly-owned subsidiary of United Distillers of Canada, Ltd.

Q. And was that for the purchase of the outstanding one-half interest that the name was changed to United Distillers of America? A. Yes.

[7408] Q. Ltd. A. The United Distillers of America. The "America" was in parentheses.

Q. And were you president of the prior company? A. Yes, sir.

Q. And did you continue as president of the United Distillers of America? A. Yes.

Q. How long did you occupy that position? A. Until we sold out in June of 1945. We sold actually in May but the new owners took possession on June 1st, I believe.

Q. And what business was United Distillers of America, Ltd. in Baltimore engaged in? A. United Distillers of America, Ltd., sir, was a holding company, was an operating company, and which had a sales company called UDL of America, Inc. UDL of America, Inc.—when I

say "Inc." I mean incorporated—had a sales office in Chicago for the period from 1935 to 1936, which was under the management of Russell Whitelaw, now deceased, who was at that time the president of United Distillers of Canada, Ltd. In the early days, 1934 and 1935 and 1936, there was no actual distilling operations. It was primarily a [7409] blending and rectifying house. The distilling operations followed later. That was in 1937, I think, or 1938.

Q. Well, it started with blending? A. And rectifying.

Q. And rectifying. Then it went into distilling and it continued in all three capacities and the distribution of whiskies and other liquors? A. Yes, sir.

Q. Down to the time that it went out of existence? A. Yes.

Q. Was there a time before 1945 when it was determined that the United Distillers of America would be sold or disposed of? A. Yes; the company hadn't been very successful in its operations for a number of years, well, ever since it actually started in business, with the exception of one period when the cost of exploiting a brand was so great that the cost of exploiting as against the profit resulting and the expenses in maintaining a sales and promotional staff, the company lost money, practically, you could say, from its inception until the period prior to the war. And during the war when we started making war alcohol, [7410] we enlarged our plant and started making alcohol for chemical warfare for the United States Government.

Q. And when that company went out of existence in 1945, did you form a company of your own? A. I formed

what was known as the H. H. Klein Associates for a short period, and subsequently—I am sorry.

Q. Go ahead. A. Subsequently the H. Harvey Co. Ltd. then entered into the picture.

Q. What business did H. H. Klein Associates engage in in the short period of its existence? A. Marketing and business consultant.

Q. And the H. Harvey Co., was that formed in 1945? A. H. Harvey Co., I believe, was formed earlier, in 1939, but never was activated.

Q. When did it become active? A. In the latter part of 1945.

Q. What business did it engage in? A. In the importing and exporting business.

Q. Of what? A. Alcoholic beverages.

[7411] Q. During the last months of 1945 and during the forepart of 1946 did it do an extensive business? A. In 1945 it did approximately $1 million worth of business. In 1946, I would say it did well in excess of $4.5 million.

Q. Was H. Harvey, Ltd. an American company? A. A Maryland corporation.

Q. A Maryland corporation? A. Yes, sir.

Q. And it did business exclusively in the United States? A. Yes, sir.

Q. And it continued to do business until when? A. Until March 3, 1948.

Q. Did that company make a corporate income tax return? A. Yes.

Q. During its entire existence? A. Yes.

Q. Was its books audited by accountants? A. Yes, sir.

Q. What firm? A. Burke, Lansberg & Gerber.

Q. Did Burke, Lansberg & Gerber have charge of [7412] preparing the income tax returns from its books? A. Yes, sir. As a matter of fact, Burke, Lansberg & Gerber were the first firm of accountants that, I believe, I employed in Baltimore in 1934.

Q. 1954? A. 1934.

Q. Prior to the year 1943—— A. Excuse me, Mr. Kiendl. I would like to point out——

Mr. Bauman: Excuse me, Mr. Klein.

I object to any pointing out. There is no question before the witness.

The Court: Overruled.

A. (continuing) When I said the activities of the H. Harvey Co. on March 3, 1948 ended, I think subsequently they became—no, I am wrong, sir. I am sorry.

Q. Prior to 1943, had you been engaged in business with Mr. McLennan, Mr. Norgan and your brother, I. J. Klein? A. In some small way, sir.

Q. Had you gone into any—— A. I am sorry. Prior to?

Q. Prior to 1943.

[7413] A. Yes.

Q. Tell us what that business was. A. There were some mining deals, some oil deals, but nothing of any consequence.

Q. During that period when you were engaged in the distillery business, it was with United Distillers of Canada with which they were associated in the capacity as managing directors or directors? A. My brother was a managing director and had been from its inception until his death.

Norgan had been an officer and director and vice-president for many years. McLennan had always been a director and/or officer of one kind or another. His present capacity, I think, is president.

Q. Did you own any stock in United Distillers, Ltd. of Canada or any of its subsidiaries in 1943? A. Yes, 4200 shares.

Q. Do you know how many shares your brother owned? A. Roughly about 55,000 or 58,000.

Q. Do you know how many shares were outstanding in that company? A. 770,000.

Q. Until you acquired shares in connection with [7414] the Tivoli situation—do you know what I refer to? A. Yes.

Q. Until you acquired the shares that you did acquire in 1947, you only owned 4200 shares of stock of that company; is that right? A. That's right.

Q. And you knew the Duncan Harwood Company, Ltd.? A. Yes.

Q. Was that a subsidiary of United Distillers of Canada? A. I don't recall whether it was a subsidiary of United Distillers of Canada, Ltd., or of United Distillers, Ltd., which was the operating company.

Q. But it was a subsidiary of one or the other? A. Yes. In the final analysis it would of course be owned by United Distillers of Canada, Ltd., through the fact that United Distillers of Canada, Ltd. owned United Distillers, Ltd.

Q. Do you recall approximately the time of the execution of certain agreements between R. C. Williams & Co. and Agencias Destiladores? A. That would be in April 1944.

Q. Prior to the execution of those agreements, [7415] which are in evidence here as Government's Exhibits 4 and 5, prior to the execution of those agreements, had you obtained any tax opinion from anybody regarding the taxability or non-taxability of the income of the Agencias corporation? A. Prior to the execution of the agreement?

Q. That's right. A. By Williams and Agencias?

Q. Yes, that's right. A. Mr. Alprin, Mr. Max O. Alprin, one of the defendants here, was retained by Agencias to act for it, and he consulted with the firm of Haas, Schlesinger & Mayers, of which Haas, I believe, was the senior partner, and obtained his opinion in connection with the agreement in question.

Mr. Kiendl: May I have Exhibits 8 and 358, please.

(Documents handed to Mr. Kiendl.)

Q. You say Mr. Alprin consulted with that firm and obtained an opinion from them? A. Yes.

Q. I show you this opinion dated April 17, 1944, Government's Exhibit 8, and ask you if you can identify that as the opinion which was obtained by Mr. [7416] Alprin in the way you have described (handing). A. Yes.

Q. Was that opinion brought to your attention? A. I would have to say I think so. I don't have any direct recollection, sir.

Q. Did you at any time have anything to do with supplying Mr. Haas with any of the material that he may have used in connection with the preparation of that opinion? A. I didn't know Mr. Haas.

Q. And when did you first meet Mr. Haas? A. I stated at one time in the interrogation with Victory and McCarthy that I met Mr. Haas in 1945, but I said I didn't recall. But it has been called to my attention by Mr. Haas that I didn't meet him until the fall of 1946.

Q. Until the fall of 1946? A. Yes. I had made a mistake, and I agree I didn't meet him in 1945.

Q. So in the year 1944, when that opinion was written, you had never met him at all and you had never talked to him? A. No, sir.

Q. Did you have anything to do with the [7417] submission to Mr. Haas of Exhibits 4 and 5 or any other documents in connection with the preparation of this opinion? A. You are talking now about the contracts themselves?

Q. Yes. A. No, sir.

Q. There has been testimony here to the effect that Mr. Haas did not receive a copy of the supplemental letter, Government's Exhibit 5. Do you recall that? A. I remember the testimony, yes.

Q. Did you have anything to do with that, if it happened? A. No, because I didn't know him.

Q. Did you at any time give Mr. Alprin any instructions to withhold anything from Mr. Haas in connection with the preparation of his opinion? A. Oh, no.

Q. I show you Government's Exhibit 358, which is another opinion of Mr. Haas, dated February 27, 1945 (handing). Do you know the circumstances under which that opinion was obtained? A. Could I take the time to read this, please?

[7418] The Court: Surely.

The Witness: Thank you.

A. Yes, sir.

Q. You know the circumstances under which that was obtained? A. Yes.

Q. Will you tell us, Mr. Klein, what they were. A. We were coming to the end of the first taxable year of Agencias' operations. I believe the first shipment of Harwood to R. C. Williams by Agencias took place in June of 1944. Normally, a corporation would be required for the year of operation of 1944 to make a return on March 15, 1945. I wanted to be sure that Agencias was not involved in any taxable position, and if it was, that the corporation would pay taxes on due date. That resulted in, I believe, a telephone call or a personal discussion with Mr. Alprin to obtain that opinion from Mr. Haas.

Q. It was your request that Mr. Alprin obtain that opinion? A. Yes, sir.

Q. And do you know of the circumstances under which Mr. Alprin obtained it? A. No, I do not.

[7419] Q. Did you have anything to do with the submission of any documents or any memorandum or any information of any kind to Mr. Haas in connection with it? A. I don't believe so.

Q. Did you give any instructions to Alprin to withhold anything from Mr. Haas in connection with the preparation of that opinion? A. No, sir.

Mr. Kiendl: May I have Government's Exhibit 359.

(Document handed to Mr. Kiendl.)

Q. Did there come a time, Mr. Klein, when you obtained an opinion from a lawyer or accountant by the name of Burke? A. Yes, sir.

Q. Was he the head of the firm whose name you mentioned before? A. Burke, Lansberg & Gerber.

Q. Can you identify this as the opinion you say you obtained, Government's Exhibit 359? A. Yes, I remember this.

Q. Do you remember the circumstances under which that was obtained? A. Merely double-checking.

[7420] Q. You say "Merely double-checking." Will you explain a little more fully what you mean by that? A. Not having as much experience with Mr. Haas as I had with Mr. Burke, having never met Mr. Haas, only on what Mr. Alprin had told me about the firm, but knowing Mr. Burke, the fact that he had done work for our company since 1934, I relied probably with a little more weight on Mr. Burke's opinion, and, consequently, I went to Mr. Burke to get another opinion as to the taxability of Agencias.

Q. In this case Mr. Burke testified that he did not receive a copy of the supplemental letter, Government's Exhibit 5, in connection with the preparation of that opinion.

Did you have anything to do with that? A. I don't have any recollection—did I submit to him a copy of the agreement?

Q. Yes. A. Yes, I did.

Q. Did you submit to him a copy of the supplemental agreement, or don't you know? A. I don't know, because I don't want to dispute Mr. Burke's words. I don't want to get in conflict [7421] with him when he said he didn't see it. I have no recollection of not showing it to him. There wouldn't be any reason why I wouldn't.

Q. You haven't any recollection of actually showing it to him? A. I don't actually have a recollection of showing

him the original agreement. If that happened, then I don't know why I wouldn't have shown him the supplemental agreement.

Q. Did you at any time intend to keep from Mr. Burke any information which would enable him to write a tax opinion regarding the taxability of the income of Agencias for the year 1944? A. Certainly not.

Q. He had done your tax work for a number of years, had he not—that is, Mr. Burke? A. That's right.

Q. There was some assistant or accountant in his firm, Mr. Older? A. Morris B. Older.

Q. He had done tax work for you and your company, had he not? A. Under the supervision of Mr. Burke, yes.

Q. And Mr. Older was a man who was a witness [7422] in this case, whose testimony has been striken out? A. Yes.

Mr. Kiendl: May I have Government's Exhibit 21, please.

(Document handed to Mr. Kiendl.)

Q. I show you this document, Mr. Klein, which has been offered in evidence as Government's Exhibit 21, a letter from you to Mr. Ostrow. You identified that as your letter? A. Yes, sir.

Q. It says it encloses a copy of a letter written to Mr. I. J. by Attorney J. Stanley Halperin. I. J. are the initials of your brother? A. Yes.

Q. And did you receive the enclosed letter from Mr. Halperin to your brother, dated March 3, 1944, from your brother? A. It was addressed to my brother.

Q. Did he bring it to your attention? A. No. He was in New York, I believe, at the time, staying at the Waldorf,

and I came up to meet him here from Baltimore. I spent probably a day or so with him. He may have come to Baltimore with me, I don't recall, subsequently. However, in any event, [7423] he did show me a copy of this letter. Is that what you want to know?

Q. Yes. A. Yes.

Q. Did he tell you what to do with it, if anything? A. He asked me when I went back to Baltimore to please send it on to Ostrow.

Q. Did you read the letter? A. Yes, I did.

Q. And you did send it on to Ostrow as per the exhibit? A. Yes, I did.

Q. And did the letter itself, the enclosed letter from Mr. Halperin to your brother, have anything to do with your transactions? A. Oh, no. It had no relation whatsoever, nothing that I was even remotely interested in.

Q. There has been testimony here from a man named Jules Jacob. You knew Jules Jacob? A. Yes, sir.

Q. You knew he was the counsel for the firm of R. C. Williams & Co.? A. Yes.

Q. And you were here when he testified on the [7424] witness stand? A. Yes, sir.

Q. You know that most of his testimony has been stricken out? A. Yes.

Q. Do you recall that he testified on his examination by Mr. Bauman that there was a meeting here in New York prior to the execution of the contracts, Exhibits 4 and 5, at which you were present and in which you participated? Do you recall that? A. I remember his testimony, yes.

Q. And did you attend certain conferences at which Mr. Jacob was present prior to the execution of the contract? A. I believe one.

Q. What? A. I believe one of them. There might have been two; I don't have any definite recollection about that.

Q. When Mr. Jacob testified on his direct examination in connection with a conference at which he said you were present, that Mr. Alprin suggested that he draw you up a supplemental agreement, he, Mr. Jacob, draw up a supplemental agreement, and that it be separate from the main agreement, Mr. Jacob testified [7425] that at that conference you stated that you felt that that would look better. Did you ever say or suggest any such thing to Mr. Jacob or anybody else? A. No, sir.

Q. Did you have anything to do with the separation of the contract into its two component parts, the main agreement and the supplemental letter? A. No, sir.

Q. Who did have charge of that? A. Mr. Alprin was a lawyer and Mr. Jacob was a lawyer. I don't presume to be a lawyer; I am a businessman.

Q. Did you instruct Mr. Alprin at any time to separate the agreement into two component parts? A. Certainly not.

Q. Did you instruct Mr. Jacob to do so? A. No; I couldn't instruct Mr. Jacob. He was acting for R. C. Williams.

Q. Did either of them come to you to ask you whether you wanted it split into two parts? A. No, sir.

Q. Mr. Jacob, on his direct examination, testified to this, that has not been stricken out, that on one of the occasions at which you were present, [7426] there was discussion with relation to the compensation to be paid to Mr. Alprin, and you said that you wanted to pay Mr. Alprin a fee and that the commissions of 60 cents a case, which

generally went to the appointees of Mr. Klein, should be given to Mr. Alprin. Did you have any such conversation with Mr. Jules Jacob? A. Not in the slightest.

Q. Did you know or learn whether or not Mr. Alprin at any time represented R. C. Williams & Co., received retainers from R. C. Williams & Co.? A. As a matter of fact, I think he told me he did.

Q. Mr. Klein, did there come a time when you formed a corporation called Tivoli Trading Corporation? A. Yes, sir.

Mr. Kiendl: May I see Government's Exhibit 89-A, please.

(Document handed to Mr. Kiendl.)

Q. I show you what I call a certificate of incorporation. It is the registration of the Social agreement of Tivoli Trading Co., Government's Exhibit 89-A, which showed it came into existence on April 9, 1945. Do you recall the circumstances under which that corporation was organized? [7427] A. I just do not know what you mean by circumstances.

Q. Did you arrange for the formation of the corporation? A. Yes, all of these corporations that we had in the past have all been formed with the agreement of the various stockholders.

Q. When I say did you cause the corporations to be organized, you and the three Canadians, your brother, Mr. McLennan and Mr. Norgan caused it to be organized, is that what you wanted to say? A. That's right. The establishment here as been I, and I just want to make it clear that "I" does not necessarily mean me.

Q. In connection with these corporate activities, it esn't mean you at all, it means you and your three Cana an associates? A. Yes.

Q. The three whose names I have just given you? A. es..

Q. And you four caused this corporation to be formed, ivoli Trading Company, in April, 1945? A. I acted as one f four, with the other three.

Q. You did that through counsel in Panama or counsel n Cuba, or where? A. Through Mr. Rosenberg.

Q. Through Mr. Rosenberg? A. Yes.

Q. What was the purpose of the formation of [7428] he Tivoli Trading Company? A. When it was originally ormed, I don't think there was any idea as to what it was ltimately going to be. But subsequently it became a catch-ll company or depository of funds that were paid into that ompany by the various operating companies and/or hold-ng companies.

Q. Did there come a time when consideration was given to permitting certain people to become stockholders of that company? A. Yes, sir.

Q. Prior to the formation of the company on April 9, 1945, did you at any time have any conversation with Mr. Roer regarding any payments to be made to him by way of commissions, of bonuses or any thing of that kind? A. Prior to the formation of that company?

Q. On April 9, 1945. A. Yes, in the late fall of 1944 or the early winter of 1945.

Q. And where did you have a conversation with him, do you recall? A. Winnipeg.

Q. Was anybody else present? A. McLennan and my brother.

Q. And when you four had the conversation— [7429] withdrawn.

When you had the conversation, will you tell us what transpired, as near as you remember it, in substance?

Mr. Bender: May the defendant Haas respectfully object on the ground it is not binding on him, the transaction or the conversation.

The Court: Yes.

(The question was read.)

A. The conversation merely resulted in the fact that Roer was told if the company——

The Court: Just a moment. This was a conversation taking place in 1945?

Mr. Kiendl: Right, your Honor.

The Court: Haas was not present. Haas is here in court and can cross-examine. The objection is overruled.

Go ahead, I am sorry.

A. (Continuing) In substance—I wouldn't remember the details, but in substance—he was told that if the company was successful he would be given a bonus of X cents per case, I don't recollect the exact amount, in connection with the operations of Harwood, the sale of Harwood in the United States.

[7430] Q. In that conversation was anything said as to how the bonus would be calculated? Was it on all sales of

Harwood or on the sales of any individual, or what was it?
A. Only on the sales by Roer, as it applied to him personally.

The Court: May I interrupt to ask a question?

Mr. Kiendl: Certainly, your Honor.

The Court: Because I don't know whether this in an inadvertence, and if it isn't I want to understand it clearly.

Do you recall Mr. Roer's statement which was read into evidence, where he stated that this conversation took place in 1943?

The Witness: Yes, sir.

The Court: The original shipments of Harwood's whiskey under this arrangement started in about June, 1944?

The Witness: That's correct.

The Court: Did you mean to say that this conference at which you, your brother, Mr. McLennan and Mr. Roer were present took place in the latter part of 1944 or the early part of 1945?

The Witness: It could have been January, 1945, [7431] or October-November, 1944.

The Court: But it was after the shipments had started and not before?

The Witness: That's correct.

The Court: All right. Thank you.

Mr. Bender: May I point out, your Honor, that Mr. Roer is not on trial here, that as far as the defendant Haas is concerned——

The Court: I have ruled. Let us not have any play acting here in front of the jury. The fact is that I have overruled your objection. This took place prior to June 1st, 1946

Mr. Bender: I cannot cross-examine Mr. Roer through Mr. Klein. He is not here.

The Court: Mr. Bender, did you hear me say that I ruled?

Mr. Bender: Yes, your Honor.

The Court: You have enough experience at the bar to know there is no purpose served for you and me to get into a tangle about it.

Mr. Bender: Absolutely not, your Honor.

The Court: Proceed.

By Mr. Kiendl:

Q. Mr. Klein, after that conversation with Mr. Roer [7432] in Winnipeg, you came to New York eventually? A. Eventually, yes.

Q. Did you at any time after your conversation with Mr. Roer have any conversation with Mr. Koerner on that subject? A. With Mr. Koerner, yes.

Q. When did you have such a conversation? A. I believe it was shortly after I got back.

Q. About when would that be, the early part of 1945 or the last part of 1944? A. That's right.

Q. Where did that conversation take place? A. I will have to put in this way. I spent some time in New York and some time in Baltimore. I don't have a definite recollection whether it was in New York or it was in Baltimore.

Q. However, it was in one or the other place? A. I have an idea that it was in New York. On the other hand, I was tied down to a plant also in Baltimore, making war alcohol at that time, and my trips were infrequent.

Q. Who was present when you had the conversation you referred to with Mr. Koerner? A. I don't believe anyone was.

Q. Was Mr. Alprin present? A. No, I don't believe he was.

[7433] Q. Will you tell us what the substance of that conversation was? A. Merely the same——

Mr. Bender: Same objection.

The Court: Same ruling.

A. (Continuing) Merely in substance the same story that I told Mr. Roer in Winnipeg, with the exception that as it applied to Mr. Koerner it was to apply on national sales and not on restricted territorial sales.

Q. It was not to apply solely on Roer's sales but on all sales of Harwood whiskey? A. That is correct.

Q. Did there come a time when you had a conversation with Mr. Alprin on that subject? A. Yes, sir.

Q. Where was that? A. I would have to make the same statement as applied to Mr. Koerner, as to where it was, I have no definite recollection. It would either be in New York or Baltimore.

Q. Was anybody else present when you talked to Mr. Alprin about it? A. No, sir.

Q. What was the substance of the conversation you had with Mr. Alprin? [7434] A. To the same effect.

Mr. Bender: Same objection.

The Court: Same ruling.

A. (Continuing) If the company were successful, as it gave an appearance of being, that we would work out a bonus of X cents per case on the total sales.

Q. When Tivoli was incorporated, did you know whether or not there were qualifying shares issued? A. I believe there were two.

Q. I show you these documents and ask you if you can tell us whether or not they came to your attention in connection with the issuance of qualifying shares of Tivoli? A. I don't recall seeing them. I may have, sir.

Q. Do you know whether qualifying shares were originally issued to Panamanians and then transferred by them? A. Yes, transferred—one was to Ellis Rosenberg and the other was to me.

Mr. Kiendl: I offer these transfers in evidence.

Mr. Bauman: May I ask the witness a preliminary question, your Honor?

The Court: Yes.

Preliminary Cross Examination by Mr. Bauman:

Q. In relation to these two papers, Mr. Klein, [7435] have you ever seen those before? A. I have no recollection whether I did or not, sir.

Mr. Bauman: The Government objects, then.

Mr. Kiendl: We ask to have them marked only for identification as one exhibit.

(Marked Defendant Klein's Exhibit EQ for identification.)

Direct Examination Resumed by Mr. Kiendl:

Q. I show you these two documents and ask you if you recognize those as qualifying shares of stock in Tivoli Trading Company? A. Yes, sir.

Mr. Kiendl: I offer them in evidence.

Mr. Bauman: The Government has no objection, your Honor—that is, to all but the handwriting in the upper corner, which I gather you are not offering, Mr. Kiendl?

Mr. Kiendl: We are not offering that.

Mr. Bender: Defendant Haas will object as not binding to him.

The Court: Overruled.

Mr. Donohue: The defendant Alprin offers no objection, your Honor.

[7436] The Court: All right, it will be received.

(Defendant Klein's Exhibit ER received in evidence.)

Mr. Kiendl: I offer the other certificate in evidence.

Mr. Bauman: No objection by the Government.

Mr. Kiendl: Do you object, Mr. Bender?

Mr. Bender: With your permission——

Mr. Kiendl: Not with my permission.

Mr. Bender: With the Court's permission, I object.

The Court: Your objection is overruled, and that is with the Court's permission.

Mr. Donohue: I have no objection, your Honor.

(Defendant Klein's exhibit ES received in evidence.)

[7437] Mr. Kiendl: With the Court's permission, may I call the jury's attention to the exhibits?

This Exhibit, Defendant Klein's Exhibit ER is a certificate of stock, a stock certificate of Tivoli Trading Company, and it is No. 1. It is for one share of stock, and it says that Tivoli Trading Company registered and so on in Panama (reading).

The other certificate is No. 2 for one share of stock, dated the same day, and it certifies that Mr. Rosenberg is the owner of one share and it bears the same cancellation stamps with the same date on them and "for value received, I, the undersigned, * * *" (reading).

Q. Mr. Klein: I show you photostatic copy—we haven't the original, your Honor—of Defendant Roer's Exhibit EH.

Mr. Kiendl: Is that right, EH?

Mr. Horowitz: Yes.

Q. —and ask you if you have seen that document before. A. Yes, sir.

Q. That is a check from Mr. Roer to the order of Tivoli Trading Co. for $1000 and it is dated September 25, 1945. On or about September 25, 1945 [7438] did you have any conversation with Mr. Roer on the subject of that payment of $1,000? A. It is probably that day or a few days before that.

Q. When you say it was probably that day or a few days before, do you mean by that to the best of your recollection it was that day or a few days before? A. That's right.

Q. And what conversation did you have with him and where did it take place?

Mr. Bender: Defendant Haas, your Honor, objects.

The Court: The same ruling.

A. That we—"we" meaning of the three Canadians and myself—had thought it would be a good idea that they would have an interest in the company which was going to pay them a commission or bonus, and that he was allocated 1000 shares of stock at $1 per share and "if you would give me a check for $1000, why, from there on, when all the others have subscribed, the due course of stock will be issued."

Q. And what did Mr. Roer say to that? A. He was very agreeable, sir.

Q. And was it as a result of that conversation [7439] that this check was received? A. That's correct.

Q. Do you remember whether Mr. Roer gave you the check himself? A. I believe he did. To the best of my recollection he did.

Q. And what did you do with the check? A. I believe I gave it to Mr. Rokoff to hang onto until all the checks were there.

Q. You say prior to the receipt of that check and prior to the conversation with Mr. Roer you had a conversation with your three Canadian associates? A. That's right.

Q. On the subject of letting some of these men in, have an interest in one of the companies? A. Only Tivoli.

Q. Only Tivoli. A. Tivoli was not an operating company, sir.

Q. I see. And after your conversation with Mr. Roer or about that time did you have any conversation with any

of the other men that you were considering? A. Yes. Mr. Rokoff, Mr. Silver, my brother-in-law, Mr. Lexier, Mr. Alprin, Mr. Koerner, Mr. Rosenberg.

Mr. Kiendl: May I have Government's [7440] Exhibit 250.

Q. I show you this check of Mr. Koerner to the Tivoli Trading Company for $500, dated October 2, 1945. Did that check come to your attention? A. Yes, sir.

Q. And did you have any conversation with Mr. Koerner regarding that payment? A. In substance the same as Mr. Roer.

Q. And where did that conversation take place? In New York or Baltimore or don't you know? A. I don't recollect whether it was New York or Baltimore. It would have been one of those two places.

Q. And did you receive that check the same as you received Mr. Roer's check of $1000? A. I believe I did, sir.

Q. And what did you do with it? Turn it over to Mr. Rokoff, too? A. Turned it over to Mr. Rokoff for safekeeping.

Q. Did you have a talk with Mr. Alprin on the same subject? A. Yes, sir.

Q. By the way, Mr. Koerner's check is for $500, Mr.—— A. Mr. Roer's is for $1000.

[7441] Q. Mr. Roer's is for $1000. A. Yes.

Q. And you had a talk with Mr. Alprin and what did you say to him? A. Well——

Mr. Bender: The same objection.

The Court: Same ruling.

A. In substance the same as Mr. Roer and Mr. Koerner.

Q. Did Mr. Alprin get 1,000 shares or only 500? A. 500.

Q. 500, the same as Mr. Koerner? A. For $500.

Q. For $500? A. That's right.

Mr. Kiendl: May I have Mr. Alprin's Exhibit FG.

Mr. Horowitz: It is EG, I think.

Mr. Kiendl: Is it EG? While they are looking for that one——

The Court: Here it is. Here is a copy of it, if you want to use that.

Mr. Kiendl: Thank you, your Honor.

Q. I show you photostatic copy of a check [7442] from Mr. Alprin to Tivoli Trading Company for $500. Did that come to your attention? A. I am sure it did.

Q. And did you receive it and turn it over to Rokoff to hold with these other checks that you have mentioned? A. I may have, sir. I don't recall this one particularly.

Q. You don't recall that? A. But I wouldn't hesitate in saying that it is quite possible I did.

Q. How about Mr. Rokoff? Did you have a talk with him about subscribing to the stock of the Tivoli Trading Company? A. Yes, sir.

Q. And tell us what the substance of that conversation was. A. That in due course he would receive a bonus, and therefore that we felt, being a stockholder, he might feel more encouraged, so to speak.

Q. And did you tell him how many shares you were going to permit him to subscribe to? A. Yes, I believe I did, sir.

Q. How many? A. I believe it was 150 shares.

[7443] Q. I show you a check of Mr. Rokoff's to Tivoli Trading Company, a photostatic copy of Exhibit——

Mr. Kiendl: What is it?

Mr. Horowitz: KLDX.

Q. —Mr. Klein's Exhibit DX, for $150. Is that the check by which Mr. Rokoff paid for that subscription? A. Yes, sir.

Q. Did that come to your attention or did he keep that? A. He kept that.

Mr. Kiendl: Have we found the stock——

Mr. Meagher: You have it there.

Mr. Kiendl: Oh, yes.

Q. In addition I show you photostatic copy of Mr. Alprin's Exhibit EG. That you have already identified as a check from Mr. Alprin. A. Yes.

Q. Now how about the others, Mr. Silver, Mr. Rosenberg and Mr. Lexier? Did you have conversations with them on the same subject? A. Along the same lines; and I think it was $100 for Silver, $200 for Rosenberg, and $400 for my [7444] brother-in-law, Lexier.

Q. I show you a check and ask you if you can identify that as Mr. Rosenberg's check for $200 to the Tivoli Trading Company, October 15, 1945. A. Yes, sir.

Q. Do you know what happened to that check? Did that come to you or did it go to Mr. Rokoff? A. No, I think Mr. Rosenberg probably gave that to Mr. Rokoff.

The Court: Has that check been marked in evidence?

Mr. Kiendl: No, your Honor. I meant to offer it. I will offer it in evidence.

The Court: All right. We will take the luncheon recess now until 2.15.

(Recess until 2.15 p. m.)

[7445] AFTERNOON SESSION

(Jury present.)

Mr. Kiendl: We offer in evidence the Rosenberg check.

I understand the Government has no objection to it.

Mr. Bauman: No objection.

Mr. Bender: The defendant Haas makes the same objection, the check is not binding as to him.

The Court: Sustained.

Mr. Donohue: Defendant Alprin has no objection.

(Defendant Klein's Exhibit ET received in evidence.)

Mr. Kiendl: This, ladies and gentlemen, is a check of Ellis Rosenberg, October 15, 1945, drawn on the Munsey Trust Company, to the order of Tivoli Trading Company, S. A., for $200, and endorsed For Deposit Only to the account of Tivoli Trading Co., S. A.

HYMAN HARVEY KLEIN, resumed.

Direct examination continued by Mr. Kiendl:

Q. I have exhibited to you all the checks with the exception of two of the two individuals you [7446] mentioned, Silver and Lechtzier. A. Yes.

Q. Do you know whether they gave checks for their subscription? A. They did.

Q. Do you know how many shares Lechtzier subscribed for? A. 200.

Q. And Silver? A. 100.

Q. Do you know——

Mr. Kiendl: May I have Government's Exhibit 339, please?

(Document handed to Mr. Kiendl.)

Q. Do you know what the total amount of all those checks was? A. $2850.

Q. The Tivoli Trading Company records have been received in evidence here as Government's Exhibit 339, the bank records of the Agency of the Royal Bank of Canada in New York, and there are shown as credits on November 20, 1945, two separate amounts, one for $145,088—it looks like—and 4 50 cents,[sic] and the other for $2,850, and there is a deposit slip of $145,000 and I don't find one for $2850. Maybe it is here. Do you know what that $2850 deposit represents? A. It represents the total of those checks.

Q. After the deposit of those funds in the bank [7447] on November 20, 1945, do you know whether or not the certificates of stock thus subscribed for by those seven in-

dividuals were actually issued, completed? A. No, sir, they were not.

Q. Do you know whether Mr. Rosenberg, as president of Tivoli, ever signed any certificates for the stock thus subscribed for by the seven individuals? A. Yes, he did.

Q. Can you identify these as the certificates you referred to? A. Yes, sir.

Q. Can you identify the signature on each of those certificates of Ellis Rosenberg? A. Yes, sir.

Q. As his genuine signature? A. Yes, sir.

Mr. Kiendl: I offer those certificates in evidence as one exhibit.

Mr. Bauman: No objection.

Mr. Bender: The defendant Haas will object to these six certificates on the ground they are not binding as to him.

The Court: Sustained.

Mr. Donohue: The defendant Alprin urges their acceptance, your Honor.

[7448] Mr. Kiendl: You say six, Mr. Bender?

Mr. Bender: I think there are six.

Mr. Kiendl: There are seven, including Mr. Rosenberg.

Mr. Bender: Mr. Rosenberg, yes, seven, I am sorry.

(Defendant Klein's Exhibit EU received in evidence.)

Mr. Keindl: These, ladies and gentlemen of the jury, are seven stock certificates of Tivoli Trading Company, S.A., all dated November 26, 1945, all

signed by Ellis Rosenberg as president but not signed by the secretary.

The first one is to Mr. Alprin for 500 shares, the second to Mr. Koerner for 500 shares, the third to Mr. Roer for 1000 shares, the fourth to Mr. Lechtzier for 400 shares, the fifth to Mr. Rosenberg for 200 shares, the sixth to Mr. Silver for 100 shares and the seventh to Mr. Rokoff for 150 shares.

By Mr. Kiendl:

Q. These stock certificates signed by Mr. Rosenberg and not signed by the secretary, did you have any discussion with Mr. Rosenberg about the issuance of those certificates? A. Yes, I did, sir.

[7449] Q. Now bearing in mind that the documentary proof in this case shows that a deposit of $2850 on November 20, 1945, and the dates on these certificates November 26, 1945, can you tell us whether it was before or after the deposit and the signing of these certificates by Mr. Rosenberg that you had a conversation with him? A. It was after Mr. Rosenberg brought the certificates back.

Q. And where did you have a conversation with Mr. Rosenberg regarding these certificates? A. In my office in Baltimore.

Q. And was anybody else present? A. I don't believe so, sir.

Q. And what was the substance of that conversation?

Mr. Bender: I will object to that, your Honor.

The Court: Sustained.

A. Mr. Rosenburg had discussed with me—he had signed the certificates and brought them into the office and he

hadn't asked me very much about the fact that I asked for his check and subscription of the Tivoli Trading Company. Then he asked me what [7450] the stock certificates represented and I told him that they represented an interest for himself and the rest of them in the company which would ultimately pay them a bonus and/or commission as the case may be, and he said, "I don't think it is a good idea." He said, "I have brought the certificates, I have signed them, but I still think you are making a mistake."

And I said to him, "Why, Ellis?" He said, "These fellows are going to be minority stockholders. There are 2850 shares," and he recalled to my mind a man by the name of Gilbert—someone with a name similar to that—who had a penchant for buying one share of stock in a large corporation and then going in and causing a rumpus at an annual stockholders' meeting, and he said, "I don't say that these men could do this, but it is not unreasonable to suggest that they could. They can examine books and they can do one thing and another. After all, they have certain rights as stockholders. I don't think you ought to be in a hurry about this thing. I think you ought to think about it."

I think I talked about it that day day and discussed it with my brother over the telephone.

The Court: Now just a moment. That is stricken out. The question was merely what was said between you and Mr. Rosenberg.

Q. He told you to think it over. Was anything else said in substance in that conversation? A. No.

Q. What did you do about it after you had this conversation with Mr. Rosenberg? A. I telephoned my brother.

Q. Did you talk to him about it? A. I told him in substance what Mr. Rosenberg had told me, and he agreed with Mr. Rosenberg after thinking about it. He said, "Let me talk with the others," and I called him back later that day.

The next day I said to Mr. Rosenberg or the following day, "Ellis, I think you are right." And those subscriptions were never completed.

Q. We are getting a little ahead of my question again. After you talked to your brother and he had talked to the others and you agreed that Mr. Rosenberg was right, you saw Mr. Rosenberg later on? A. That day or the following day. I don't recall.

Q. You had a conversation with him about these subscriptions? A. That's right.

Q. And tell us the substance of what was said in [7452] those conversations.

Mr. Bender: The same objection.

The Court: The same ruling.

A. In substance he said they were right and everyone agreed with him and those subscriptions were never completed—the stock certificates were never completed.

Q. Did you have any conversation with Mr. Rosenberg with regard to what you would do regarding the moneys you originally received which you originally permitted them to subscribe? A. Well, in substance what I told them was that they subscribed for 2850 shares of stock and that I would return the money to them and in effect purchase their subscriptions.

Q. When you told them that you mean you told the seven individuals? A. I told Mr. Rosenberg.

Q. You told Mr. Rosenberg? A. That's right.

Q. And what did he say about that? A. He saw nothing wrong with it.

Q. And what was done thereafter? A. I repaid Mr. Rosenberg in cash his subscription, Mr. Silver his and the rest of them accordingly—most of them.

[7453] Q. Did you personally pay them all? A. Yes, sir.

Q. Did you obtain any receipts from them for the money you repaid them? A. Strangely enough I wasn't going to obtain any receipts but Mr. Rosenberg with the caution of a lawyer suggested that a receipt be obtained.

Q. When did he suggest that? In one of these conversations? A. That day or the following day. I don't recall exactly.

Q. Were the receipts prepared? A. He dictated the receipt to Mr. Rokoff.

Q. Did you get the receipts signed yourself when you paid these—withdrawn.

Did you thereafter pay these moneys back to the men who put in their subscriptions? A. Yes, sir.

Q. And for the amount shown by the checks in each case? A. That's right.

Q. And you did that in person? A. Yes, sir.

Q. And did you get receipts signed when you paid them the money? A. Yes, sir.

Q. Are these the originals of Mr. Alprin's, Mr. [7454] Koerner's, Mr. Roer's, Mr. Rosenberg's, and Mr. Silver's receipts (handing)?

(The witness speaks to Mr. Kiendl in a low voice.)

Mr. Bauman: I can't hear you, Mr. Klein.

The Witness: One more should be here, Mr. Rokoff's.

The Court: 388 is those and 389 is Rokoff's separately.

Mr. Kiendl: We are going to ask for those in a minute.

Have you Government's 388 and 389?

Klein's Exhibit DY is the original of Rokoff's.

[7455] Your Honor, Mr. Rokoff's, the original, is in evidence as Klein's Exhibit DY.

And may I have the photostatic copy of the other?

The Court: Well, it is the same as 389.

Mr. Kiendl: Yes, it is, your Honor, but this is the original.

The Court: Yes, I see.

Mr. Kiendl: Now we haven't the original of 388.

Mr. Bauman: This is one.

Q. This is the original of Mr. Rokoff's? A. Yes.

Q. Defendant Klein's Exhibit DY? A. That's right.

Q. That accounts for six of them. What is the seventh? A. I never obtained a receipt from my brother-in-law.

Q. You have no photostatic copy and no original from your brother-in-law, Mr. Lechtzier? A. I never asked for one.

Mr. Kiendl: And may we offer in evidence as part of Defendant Klein's DY, the other original [7456] receipts?

The Court: Surely.

Mr. Kiendl: Five of them.

The Court: Yes.

Mr. Bauman: May I see them, please, before they are marked?

Mr. Kiendl: Surely. Let us attach them together, and if you have any objection——

Mr. Bauman: Fine.

The Court: Those will be the Alprin, Koerner, Roer, Rosenberg and Silver receipts; is that correct?

Mr. Kiendl: Correct, your Honor.

Mr. Bauman: I have no objection to that request, sir.

Q. I show you now a document and ask you if you can identify that as the original——

The Court: Will you hold that a moment, please, until we formalize the record with respect to the additional receipts that have been offered as part of DY. So far the Government only has voiced no objection——

Mr. Kiendl: I showed them to other counsel. I don't know whether they have objected or not.

[7457] Mr. Bender: 388 and DY originally were not admitted as to the defendant Haas, your Honor.

The Court: That is what I was checking now.

Mr. Bender: No. And so we submit they should not be admitted as to the defendant Haas now, your Honor.

The Court: Objection by defendant Haas is sustained.

Mr. Donohue: Defendant Alprin offers no objection, your Honor.

Q. Mr. Klein, I show you this document and ask you if you can identify that as the original of the minutes of the meeting of the Board of Directors of the Tivoli Trading Company, December 31, 1945. A. I have seen a copy of this, sir.

The Court: Speak a little louder, please.

A. I have seen a copy of this here. I didn't see the original.

Q. Well, I call your attention to the signature of Ellis Rosenberg on the second page. Can you identify that as his original signature? A. Yes, sir.

Q. And can you identify the signature that appears over the word Chairman on the second page? [7458] A. It looks like Cabarrocas, but I wouldn't swear to it.

Q. You wouldn't swear to it.

Now attached to that document there are two sheets, appointing proxies. One bears the signature of Albert Roer. Can you identify that as his signature? A. Yes, sir.

Q. And the other bears the signature of H. H. Klein. Can you identify that as your signature? A. Yes, sir.

Q. And the initials that appear on the left side of each one of the four pages constituting this batch of documents, can you identify any of those at all? A. Only Ellis Rosenberg.

Q. But can you identify these initials "ER" on each page as those of Ellis Rosenberg? A. They look very much like his.

Q. But you can't identify them? A. I wouldn't want to be positive.

Mr. Kiendl: I offer the minutes of that meeting in evidence.

[7459] Mr. Bauman: Would you give me just one minute, your Honor?

The Court: Yes.

Mr. Bauman: May I ask one preliminary question, sir?

The Court: Surely.

By Mr. Bauman:

Q. Do you know when or where this was prepared? A. No, I do not.

Mr. Bauman: The Government has no objection.

Mr. Bender: The defendant Haas will object on the ground that the minutes are not binding as to him.

Mr. Donohue: The defendant Alprin objects on the ground these minutes are not binding as to him.

The Court: May I see them, please.

(Document handed to the Court.)

Mr. Kiendl: May I have Government's Exhibit 89-A again, please?

(Document handed to Mr. Kiendl.)

The Court: The objections are overruled.

(Defendant Klein's Exhibit EV received in evidence.)

Mr. Kiendl: I should like to read the exhibit to the jury.

[7460] (Mr. Kiendl reads Klein Exhibit EV to the jury.)

By Mr. Kiendl:

Q. Can you tell us, Mr. Klein, whether or not your conversations with these seven individuals in which you repaid them their money for the stock subscription took place in between the date of the issuance of the uncompleted certificates on November 20th, signed by Mr. Rosenberg as president, and this meeting of December 31st, when the 2850 shares were issued to you? A. Yes, sir.

Q. I show you a stock certificate for 2850 shares and ask you if you can identify that as the stock certificate that was issued to you for those shares. A. Yes, it is.

Mr. Kiendl: Before I offer that certificate in evidence, may I offer in evidence, while I think of it, Defendent Klein's Exhibit EQ for identification, the two transfers of subscription that are referred to in the minutes that have just been received in evidence.

Mr. Bauman: I think I have already objected to them upon the ground that there has been no [7461] sufficient foundation laid for them, and I still urge before the Court that there is still no foundation laid, having in mind Mr. Klein's answer to my preliminary question.

Mr. Kiendl: The minutes of the meeting refer to them specifically.

The Court: My understanding is that they are in blank.

Mr. Kiendl: They are in blank, your Honor.

The Court: The Government's objection is overruled.

Mr. Bauman: May I renew my objection with respect to the penciled initials in the righthand margin, sir.

Mr. Kiendl: We will consent that that not be considered a part of the exhibit.

The Court: All right.

Mr. Bender: The defendant Haas will object on the ground that the documents are not binding as to him.

Mr. Donohue: The defendant Alprin objects on the ground the documents are not binding as to him, your Honor.

The Court: Overruled.

[7462] (Defendant Klein's Exhibit EQ for identification received in evidence.)

Mr. Kiendl: I should like to read these to the jury.

(Mr. Kiendl reads Defendant Klein's Exhibit EQ to the jury.)

Mr. Kiendl: I now offer in evidence the stock certificate for the 2850 shares.

The Court: Have the other parties seen it?

Mr. Bauman: No objection.

Mr. Bender: The defendant Haas objects on the ground that it is not binding on him.

Mr. Donohue: The defendant Alprin objects on the ground that it is not binding on him, your Honor.

The Court: Overruled.

(Defendant Klein's Exhibit EW received in evidence.)

Mr. Kiendl: I should like to read this exhibit to the jury.

(Defendant Klein Exhibit EW read to the jury by Mr. Kiendl.)

Q. Mr. Klein, this certificate came to your attention, I think you said, this certificate for [7463] 2850 shares? A. Yes.

Q. Were you, in addition to being the record holder, the actual holder of all those shares of stock? A. I was the beneficial holder for my three associates.

Q. For you and your three associates? A. Yes.

Q. They each had a one-quarter interest? A. 713 shares each.

Q. That would equal 2852? A. Yes.

Q. So you have included the two additional shares, one in your name and one in Mr. Rosenberg's name? A. Yes.

Q. Bearing in mind that count 5 of the indictment charges that a conspiracy began on or about June 1, 1946, will you tell us what the situation was in June 1946, so far as these whiskey transactions were concerned. First, will you tell us whether or not R. C. Williams & Co. at that time continued to be the sole distributing agent for Harwood's

Blended Canadian Whiskey in the United States. A. They did.

Q. At that time was it known that the period of [7404] OPA was coming to a close? A. It was common talk in the industry that it being a luxury item, that whiskey was due to be decontrolled within a reasonable time. As a matter of fact, I believe it was during the month of June that there was an hiatus for approximately 30 days before it was put back on control. Then I think it was finally eliminated somewhere along about October 1st.

Q. At 12 o'clock midnight on June 30, 1946, OPA control ended? A. It ended for, I believe, one month.

Q. One month? A. That's correct.

Q. Do you know whether or not Williams continued to be the distributor of Harwood's Blended Canadian Whiskey from June 30th midnight on for a period of time? A. They did, only on an at-will basis.

Q. Do you know how long that continued? A. I believe until October 1st.

Q. After October 1st was the Williams contract completely at an end? A. As a contract, yes.

[7405] Q. During that period up to October 1st what was the situation so far as Auld Malcolm was concerned? Was there being distributed in the United States by anybody Auld Malcolm Whiskey? A. By H. Harvey Co.

Q. Did that continue up until October 1st or did it stop before October 1st? A. I believe it stopped before October 1st.

Q. How about these other brands of whiskey: Jockey Cap, Highland Sandy, John Dunbar? What was the situation regarding those whiskies? A. At what date?

Q. Up to October 1, 1946. Did it come to an end? A. Yes.

Q. Sometime prior to October 1st? A. I don't recall exactly.

Q. Did there come a time in the month of June 1946 where some conversations were had by you with either Mr. Koerner or Mr. Roer or Mr. Alprin regarding what they were going to do after the Williams contract was out of existence? A. Yes. They talked about going down to Cuba and forming some corporations and going into business [7466] in Central and South America.

Q. Do you recall approximately when that conversation took place? A. I believe it was sometime during the month of June 1946, but I am not positive as to dates.

Q. As near as you can recall, will you tell us the names of the persons with whom you had such conversations, which one of the three or all three or two of the three or whatever it was. A. I believe it was first with Mr. Rosenberg. He was going into the——

Q. Before you get into that, Mr. Klein, you did have a conversation with Mr. Rosenberg about what he proposed to do? A. That's right.

Q. Did that conversation take place during the month of June? A. I am sure it did.

Q. Did it take place in Baltimore? A. It did.

Q. Was anybody else present? A. That I don't recall.

Q. What was the substance of the conversation you had with Mr. Rosenberg?

[7467] Mr. Bender: Defendant Haas objects on the ground the conversation is not binding on him.

The Court: Overruled.

A. He had some thought about going into the importation of clear Havana cigars, having in mind, having talked to someone who was very successful in that field, on a private label basis, and he felt he might be successful at that idea and he was going to develop it.

Q. Did he say anything about the possibility of his forming any Cuban corporation for that purpose? A. Yes.

Q. Did he tell you that on that occasion? A. Yes.

Q. Did you have any conversations with Mr. Alprin or Mr. Roer or Mr. Koerner about what they were going to do when the Williams contract came to an end? A. Only to the extent that they were going into business, trying to establish a market in Central and South America.

Q. Who told you that? A. Either all three of them or all of them, I am not sure, sir.

Q. You are not sure? [7468] A. No, sir, I am not.

Mr. Bender: I make the same objection to that conversation, your Honor.

The Court: The same ruling. Overruled.

Q. At any time, Mr. Klein, did you give any one of those four any instructions that they should form Cuban corporations for any purposes of yours? A. No, sir.

Q. There has been some testimony here to the effect that you requested them to form these Cuban corporations, and these Cuban corporations might obtain agencies for the sale of Harwood's in Central and South America, and at the conclusion of the Williams contract the possibility of doing that in the United States. Did you ever tell them any such thing? A. That is a long question. Could I have it read?

(Question read.)

A. Insofar as—I would like to break that up, if I may.

Q. Answer it the best way you can. A. Firstly, in sofar as forming a Cuban corporation or corporations anywhere are concerned, I categorically [7469] deny that I told them to form corporations anywhere.

Insofar as the question of getting Harwood for Central and South America, there is a possibility that I might have told them that.

Q. You have no recollection? A. I have no recollection, no.

The Court: There is still one-third of the question unanswered. You were also asked whether you said anything about any of these companies getting the American agency after R. C. Williams was out. Wasn't that part of your question?

Mr. Kiendl: Yes.

A. There wasn't any such discussion because R. C. Williams carried on at an at-will basis with Harwood, and subsequently R. C. Williams formed a subsidiary company called Carillon Importers, which also carried on with Harwood for at least a year and a half or two years beyond the original contract with Agencias.

Q. When the contract with Agencias came to a final end on July 1, 1946, it continued on at an at-will basis for a few months, and then it ended entirely? A. That's right.

[7470] Q. Now when it ended entirely are you telling us now that R. C. Williams & Company through some subsidiary had a contract direct with Duncan Harwood, Ltd. A. They had no contracts. It was on an at-will. There was a contract or letter provided they should be given 30 days notice of cancellation or something.

Q. So they had it on a basis of a 30-day cancellation notice but not with Agencias Destiladores but with Duncan Harwood, Ltd.? A. That's correct.

Q. That was a direct contract? A. That's right.

Q. Agencias was completely out of it? A. That's right.

Q. And Ramsey Scott was completely out of it? A. That's right, sir.

Q. Now did you learn that some of these men had formed corporations? A. Oh, yes.

Mr. Kiendl: May I have Exhibits 272 and 271-A to D?

Q. Did you at any time learn whether any of them ever went to Cuba with their wives? A. Oh, yes. Mr. Rosenberg, I think, told me he met them.

[7471] Q. Did he tell you whom he met in Cuba? Who were there? A. I don't recall whether he mentioned every one or not, sir. I don't remember.

Q. Did he tell you the Cuban corporations had been formed? A. As I recollect he said they were down there forming some corporations, but I don't recall.

Q. Did he tell you how many or the names of any one? A. No, he didn't.

Q. I show you Government's 271-A to D regarding the formation of four Cuban corporations: Economica Agencias, Importadora Marte, El Aguila, Compania Commercial Apollo. Did you ever see those certificates of incorporation? A. No, sir.

Q. Prior to this trial? A. No, sir.

Q. Did you have anything whatever to do with the formation of any one of those four corporations? A. Nothing whatever.

Q. Did you become an officer of any one of those four corporations at any time? A. No, sir.

Q. Did you become a director of any one of those four corporations at any time? A. No, sir.

[7472] Q. Or a stockholder? A. No, sir.

Q. Did you ever have any interest of any kind directly or indirectly in any one of those four corporations? A. No, sir.

Q. Now if there were four corporations formed by Mr. Roer in Cuba and four corporations formed by Mr. Koerner in Cuba would you tell us whether the certificates of incorporation for those companies came to your attention? A. No, sir, they did not.

Q. And were you ever an officer, director or stockholder or otherwise interested in any of those corporations, assuming their existence? A. No, sir.

Q. Now one of the corporations formed by Mr. Roer was a corporation by the name of Fernandina. Do you recall that later on a check was made to the order of that corporation? A. Yes, sir.

Q. And another corporation formed by Mr. Roer was a corporation by the name of La Ribera? A. Yes, sir.

Q. Do you recall whether a check was made to the order of that corporation? A. Yes, I do.

[7473] Q. Now after the expiration of the Williams contract on June 30th—midnight of June 30th, 1940, did there come a time when you as the president and treasurer of some of these foreign corporations arranged the transfer of funds and securities from New York to Canada? A. Oh, yes.

Q. Had you at any time prior to June 30, 1940, freely transferred funds from the bank accounts of these Pana-

manian and Cuban corporations in New York City to Canada? A. Yes, indeed, very often.

Q. Both ways? A. (Witness nods.)

Q. To Canada and back from Canada to this country? A. I remember transferring to Canada and I think we also transferred back to New York—in fact I am sure we did.

Q. Now, Mr. Klein, do you recall that securities totalling eight million some odd hundreds of thousands of dollars were transferred from New York safekeeping accounts to safekeeping accounts in Canada? A. Yes, I do.

Q. Montreal? A. Yes, I do.

Q. Do you remember when that was, approximately? A. It would be sometime the early part of September, 1946.

[7474] Mr. Kiendl: May I have Government's Exhibit 303, 309 and 315?

Q. There has been testimony here, Mr. Klein, by a man by the name of Mr. Holohan——A. Yes, sir.

Q. —that at a certain time in September of 1946 he had a telephone call with you in which he advised you——

Mr. Bauman: Excuse me, your Honor. Excuse me, Mr. Kiendl. May I object to this question as leading? This is direct examination. May I ask if Mr. Kiendl wishes to inquire into this area that he ask Mr. Klein what the conversation was that he had with Mr. Holohan. I object to this question as leading.

The Court: Overruled.

Q. (Continuing) in which he advised you that there had been served on the bank some sort of a document requiring production of records of some of these companies? A. Yes.

Q. And that in that conversation you told him of the transfer for safekeeping these securities that eventually totaled $8,000,000? Do you recall that? A. Yes, I do.

Q. Now I show you three letters each dated September 12, 1946, photostatic copies of them, from the bank records [7475] of the Royal Bank of Canada, New York Agency, and ask you if you can identify them as your letters to that bank regarding the transfer from safekeeping account of certain Canadian bonds to the Montreal Branch? I have two of them. I think I have the wrong letter for the third one.

Mr. Bauman: Would this be a convenient time to suspend for the afternoon recess, your Honor?

The Court: All right, we will take a fifteen-minute recess.

(Short recess.)

[7476] Q. I showed you during the recess Exhibit 303, what remains of the bank record of the Regan Potter account at the Royal Bank of Canada in New York, what remains of the bank record of the Seaboard Syndicate account at the Royal Bank of Canada in New York, and what remains of the Waldorf account. I called your attention to three letters dated September 12, 1946. Those were all letters written by you, photostatic copies of them, are they not? A. Yes, sir.

Q. One was written for Regan Potter & Company in the Regan Potter file, one for Waldorf Company in the Waldorf file, and one for Seaboard Syndicate in the Seaboard file. A. Yes.

Q. They are identical in language, are they not? They read: "Please transfer all Dominion of Canada bonds which you are holding in safekeeping." A. Yes.

Q. Did you write those letters at a time when you had any knowledge that there had been any court process or any process by any administrative agency served on the Royal Bank of Canada for the production of any of its books or records of any of these accounts? [7477] A. No, sir.

Q. Did anybody say or suggest to you that any such process had been served or was about to be served on the Royal Bank of Canada? A. No, sir.

Q. Did you have any conversation with Mr. Holohan or anybody else on that subject prior to writing these letters? A. No, sir.

Q. Mr. Klein, will you tell this Court and jury why it was that you transferred these bonds from safekeeping in New York to safekeeping in Montreal, the same institution, the Royal Bank of Canada? A. Firstly, the date of September 12th and the fact that the contract with Agencias, the operation was coming to an end, and the fact that the majority of stockholders were Canadians, and the fact that they were Dominion of Canada bonds, they wanted these securites in Canada.

As a matter of fact, they wanted all the money in Canada, and I saw no reason why not to transfer them to Canada, since the banks of Canada are certainly as safe as those here in the United States.

Q. Was it done at the request of your Canadian [7478] associates, your brother, Mr. McLennan and Mr. Norgan?

A. Yes, sir.

Q. Was it done sometime after June 30, 1946? A. September 12th, according to the letter.

Q. I show you an exhibit which has been received in evidence here today, Defendant Klein's Exhibit I-O, which is subpoena duces tecum, dated September 16, 1946, and served, according to its endorsement on the back of it, on September 18, 1946.

Did that subpoena have anything to do with your writing of this series of letters, the three I called your attention to, on September 12, 1946? A. It couldn't have. One is dated September 12th and the other is dated September 16th and served on the 18th.

Q. Did you have a conversation with Mr. Holohan about the service of some process? A. Yes, I did.

Q. Do you recall when it was? A. I don't recall the exact date, but Mr. Holohan testified that he called me the day he received that.

Mr. Bauman: Your Honor, I move to strike [7479] that last answer as to this witness's characterization about what Mr. Holohan said, and on the further ground it is not responsive to the question that was asked.

The Court: Denied.

Q. Will you tell us the substance of the conversation that you had with Mr. Holohan on the subject of transferring these Canadian bonds for safekeeping to Canada. A. Firstly, he told me about the subpoena, that he received

from the OPA, and I asked him what the usual practice of the bank was. He said their practice was to submit it to their attorneys and let them rule on it. In the same conversation he told me he received my letter of September 12th and the bonds had been transferred to Montreal in accordance with the request.

Q. Is there anything else about that conversation that you now recall? A. In substance, that is probably it.

Q. Did he tell you who the attorneys were who represented the bank? A. Root, Ballantine, Harlan, Busby & Palmer.

Q. Do you recall some testimony in this case [7480] regarding two checks, each for $3 million, one from Cameron Stuart to Continental and one from Continental to Cameron Stuart? A. Yes.

Mr. Kiendl: May I have Government's Exhibits 287 and 320, please.

(Documents handed to Mr. Kiendl.)

Q. I show you from what remains of the record of the Cameron Stuart Company account with the Royal Bank of Canada in Montreal, a check dated September 18, 1946, drawn by Cameron Stuart and Co. Ltd., to the order of Continental for $3 million, signed apparently by you. Is that your signature? A. Yes, it is.

[7481] Q. You drew that check? A. I signed it.

Q. You signed that check? A. Yes.

Q. After it was drawn by Mr. Rokoff? A. Yes, sir.

Q. That money was deposited in the account of Compania Continentale? A. Yes, sir.

Q. I show you the other check for $3,000,000 from what remains of the file of the Compania Continentale in the Royal Bank of Canada in Montreal, a check for $3,000,000 from that company to Cameron Stuart, dated November 4, 1946, apparently signed by you as president. Is that your signature? A. Yes, it is.

Q. You drew that check? A. I signed it.

Q. Who drew it? Probably Mr. Rokoff? A. Probably Mr. Rokoff.

Q. Were you familiar with the books of account of Cameron Stuart which showed an entry of the first $3,000,000 check lined out? A. No, sir.

Q. Had you ever seen that book prior to this trial? A. No, I never have.

Q. Had you ever seen that interlineation? [7482] A. No, I never have.

Q. Do you remember the circumstances of the drawing of these checks? A. Very well.

Q. And the signing of these checks? A. Very well.

Q. For $3,000,000 in September, 1946 and November, 1946? A. Yes, I do.

Q. Will you explain to the Court and jury why it was that the $3,000,000 check was drawn by Cameron Stuart to the order of Continentale on September 18, 1946? For what purpose it was drawn? A. I had received a long distance telephone call from my brother asking me what I thought of the investment of moneys in Vancouver real estate. I questioned him whether he meant business properties or other types of property, and he said business properties. He mentioned two, one was the Vancouver Block,—situated on the main thoroughfare in Vancouver,

called Granville Street, and the other was the old Vancouver Hotel building, which was then a structure covering half a block on Granville Street, a full block practically on Georgia Street. He thought he could purchase both. I told him that as far as I was concerned I thought the investment was a good one, since I seemed to feel, as he did, that [7483] Vancouver, being a seaport and the third largest city in Canada at that time, had an opportunity of overtaking Toronto as the second largest city, and that the investment in Vancouver real estate was a wise one.

He said, "I haven't had an opportunity to talk with George and Mac yet," meaning George Norgan and Mr. McLennan, but," he said, "suppose you transfer sufficient funds from one of the companies into Continentale." Continentale was the parent of subsidiary Cameron Stuart. Cameron Stuart was the only one which had any real large substantial sums of money available. And that $3,000,000 check was transferred from Cameron Stuart to Continentale. Subsequently George Norgan didn't agree with the idea of investing in Vancouver real estate. When he subsequently called me, he said, "George won't agree." A check was then drawn from Continentale and repaid to Cameron Stuart. That is the actual transaction that took place between these two companies and washed out, one washed out the other, so to speak.

Q. Mr. Klein, you say that Continentale was the parent of Cameron Stuart. Was Cameron Stuart a wholly-owned subsidiary? A. Compania Continentale owned all of the outstanding stock of Cameron Stuart.

[7484] Q. So Cameron Stuart was a wholly-owned subsidiary of Continentale? A. Yes.

Q. In connection with that transaction, did you advise Mr. Rokoff after the $3,000,000 check had gone forward to Continentale that the money was coming back to Cameron Stuart?

Mr. Bauman: I object to the repeated leading of the witness by Mr. Kiendl. If he wishes to elicit these conversations, I respectfully ask that he do so without leading the witness.

The Court: Sustained.

Q. Did you have a conversation with Mr. Rokoff about these checks after the $3,000,000 check had gone forward to Continentale? A. From Cameron Stuart?

Q. From Cameron Stuart, the check of September 18, 1946, Government's Exhibit 287.

The Court: Mr. Klein, did I understand you to say that to the best of your recollection Mr. Rokoff drew both of the checks and you signed them?

The Witness: That's correct.

The Court: Then he must have known that the first one was drawn for those $3,000,000 to Continentale and he must have known the other one was drawn for [7485] $3,000,000 back to Cameron Stuart?

The Witness: That's correct.

Q. Did you have any conversation with him after you had had this talk with your brother about it? A. I don't have a complete recollection other than the fact I told him that the transaction did not go through and just to put it back.

Q. Do you have any recollection on that subject? A. Not in complete detail, no.

Q. Mr. Klein, I omitted to ask you in connection with the formation of these Cuban corporations, you said that Mr. Rosenberg told you he was going into the liquor business? A. The cigar business.

Q. Did the other three tell you what business they contemplated going into? A. I think I answered that question by saying they intended to go into the liquor business in the Central and South American markets.

Q. Did there come a time, Mr. Klein, when you arranged with your three Canadian associates for you to get out of some of these corporations? A. Yes.

Q. When was that? A. The latter part of December, 1946 or the early part of January, 1947. I believe, [7486] however, that it is more likely it happened in the latter part of December, 1946.

Q. Do you remember the circumstances and conversations that you had regarding that situation with either your brother or Mr. McLennan or Mr. Norgan or any of them? A. Yes, I do. If I can lead into another conversation in relation to another company, I can explain it.

Q. You go ahead and if Mr. Bauman wants to object, he will. A. It was in connection with the fact that a deal for a distillery fell through in Scotland, and because of that fact the companies were then going to remain inactive until something else was developed, and I decided that I wanted to sell out, which they agreed to.

Q. Prior to the time that you decided to sell out and their agreement to it, you say there was some deal regarding the purchase of a distillery in Scotland? A. That's correct.

Q. Will you tell us more about it. What that deal was.

A. That had to do——

Q. Who brought it up? A. That had to do with the Tivoli, activating of Tivoli which at that time was nothing more than a depository or catch-all [7487] company, which actually had no business activities of its own. We were going to use Tivoli as a company to purchase a Scotch distillery in Scotland. McLennan was then en route to England or was already there, that is not quite clear in my mind, and it was for that purpose that originally the loan from Regan Potter to Tivoli was made. When that fell through, the loan was repaid later, and subsequently I discussed the fact that we were going to be inactive, and I didn't want this inactivity. They agreed to my selling out.

The Court: When you say "the loan", are you referring to the $1,500,000?

The Witness: That's correct.

Q. Mr. Klein, after you had agreed to sell out, did you sell out everything, or did you retain part of it or what did you do? A. I sold everything but Tivoli. I agreed to purchase from them their interest in Tivoli for an amount, I believe, which was $375,000.

Q. Was the result of that transaction that you got out of all these Cuban and Panamanian corporations, sold all your stock except Tivoli, and you became the sole owner of Tivoli? A. That's correct.

Q. In connection with the purchase of Tivoli, did [7488] you take it free and clear? Did you buy it free and clear or did you take it subject to liability? A. I took it subject to its assets and liabilities. After paying out, after

returning the loan of one and a half million dollars and making the payments of these various bonuses that had been agreed upon at so much per case, the exact figures as I mentioned before I don't remember, but there would have been a slight surplus, but I also took it on the understanding that I would assume all the assets and liabilities. I bargained for the fact that if I was going to take a calculated businessman's risk in paying off liabilities, I also wanted the chance of profit, with the net result that while I have the chance of profit I also have a lawsuit running for a claim of $2,000,000, so that the profit, if the lawsuit were successful, there would be very little profit and perhaps some loss.

Mr. Kiendl: May I have Government's Exhibit 356, please?

(Document handed to Mr. Kiendl.)

Q. Mr. Klein, I show you Government's Exhibit 356, which is a certified copy of your original income tax return, with statements attached for the year 1947, and call your attention to a schedule of long-term capital [7489] gains and losses, which is part of that return, and I just want to ask you in this part of my examination whether or not the amounts shown under the heading of "Gross Sales Price," were the 15,000 Waldorf & Company, Ltd., the 15,000 Seaboard Syndicate, and the 4,000 Regan Potter & Company, Ltd., are the exact amounts which were paid to you for the sale of those securities when you sold out in agreement with your brother and the two other Canadians? A. Yes, it is.

Q. Down to the last penny? A. To the very penny.

Q. Did you receive checks for those exact amounts? A. Yes.

Q. What did you do with the money, the close to five million dollars? A. Deposited it.

Q. Deposited it where? A. In New York and Baltimore.

Q. Mr. Klein, do you remember when the deal was closed? A. January 20, 1947. I believe that is the date.

Q. That is the date shown in this schedule, January 20, 1947. Did you file a declaration of your estimated tax for the year 1947 shortly thereafter? [7490] A. Yes, I did.

Q. I show you what purports to be a photostatic copy of a declaration of your estimated tax for the year 1947, printed signature of H. H. Klein. Do you know whether that is a copy of the declaration that you filed of your estimated tax (handing to witness)? A. I wouldn't swear that that was the exact one, but nevertheless it shows a check accompanied for $300,000, and that is what I did.

The Court: Wasn't there a situation that because the Government could not produce the original you were going to supply the one that Mr. Klein had in his file?

Mr. Kiendl: That is exactly what it is. I was just going to ask him.

Q. The original could not be supplied by the Government, and this was the one retained in your file, with the printed signature on it rather than your signature. The original of declaration of estimated tax was signed by you? A. No question about that.

Q. Assuming this is a copy, as the Government agrees it is, it shows a declaration of an estimated tax of $1,203,500. A. $1,203,500.

[7490a] Q. Of which $3500 was withheld income tax? A. That's correct.

Q. And an estimated tax after deducting the estimated tax withheld of $1,200,000? A. That's correct.

[7491] Q. And it shows the amount paid with the declaration $300,000? A. $300,000.

Mr. Kiendl: Have you got those checks for $300,000? (To Mr. Horowitz.)

Q. Now when you signed that declaration of the estimated tax, did that include the long-term capital gain on those securities that are listed in your 1947 final return? A. Yes, sir.

Q. And your final return——

Mr. Kiendl: Could I have that again, 356?

Q. On your final return you showed a tax due of a little over $1.2 million? A. That's right, $1,203,000.

Q. Of which $1.2 million had been paid? A. By estimate.

Q. Leaving a balance of some $8000? A. That's correct.

Q. Had you paid four instalments of $300,000 each? A. Yes, I did.

Q. And was that $1.2 million in both your declaration of your estimated tax and your final return [7492] at 25 percent of the long-term capital gain of approximately $5 million? A. That's correct, sir.

Q. That you made when you sold out in January of 1947? A. January the 20th, 1947, yes.

Q. I show you four checks, each for $300,000, one dated January—one dated March 4, 1947, one dated June 5, 1947, one dated September 9, 1947, and the last one dated January 10, 1948. Are those the very checks by which you paid $1.2 million for your tax in 1947? A. They are, sir.

Mr. Kiendl: I offer them in evidence.

Mr. Bender: No objection.

Mr. Donohue: The defendant Alprin has no objection.

Mr. Bauman: The Government has no objection, your Honor.

(Defendant Klein's Exhibit EX received in evidence.)

Mr. Kiendl: These are four checks, ladies and gentlemen, signed by Mr. Klein on his bank account with the Central Hanover Bank & Trust Company, New [7493] York City, each drawn to the order of the Collector of Internal Revenue, one dated March 4, 1947, the others June 5, 1947, September 9, 1947 and January 10, 1948, each for the sum of $300,000.

Q. Did you make those payments in accordance with what you understood to be the requirements of the Internal Revenue regulations? A. Yes, sir.

Q. And in instalments that became due in instalments? A. Each quarter.

Q. Each quarter or so. And the balance of the income tax shown on your return for 1947, your final return of

$8638.91 was paid by this check (handing)? A. That's correct.

Q. Signed by you? A. Right.

Mr. Kiendl: I offer that check in evidence with the attached receipt.

Mr. Bauman: Are you offering the handwriting on the reverse side, Mr. Kiendl?

Mr. Kiendl: I hadn't even noticed it.

I won't offer it if you don't want it in.

[7494] I will offer it if you do want it in.

Mr. Bauman: I don't want it in.

The Government has no objection, your Honor.

Mr. Bender: The defendant Haas has no objection.

Mr. Donohue: The defendant Alprin has no objection.

(Defendant Klein's Exhibit EY for identification received in evidence.)

Mr. Kiendl: This, ladies and gentlemen, is a check of Mr. Klein's to the Collector of Internal Revenue, dated August 3, 19—it looks like 1949—it is 1949—for the balance, $8638.91.

It has a receipt for the payment of taxes for the 1947 income tax of that amount of money attached to it.

Q. Do you know of the circumstances under which that balance was paid? A. Yes. Permission was obtained from the Collector of Internal Revenue at Baltimore to release sufficient funds in the blocked account to pay the interest and balance of the tax due.

[7495] Q. When you say "the blocked account," do you mean the account on which the Government had made the levy? A. Had made an attachment.

Q. Had made an attachment. So the Government permitted you to take out enough money to pay the balance of your income tax? A. That's correct.

Q. To the Government. A. That's right.

Q. Did you employ a lawyer to negotiate with the Government to obtain that concession? A. Yes, sir. I used my Maryland attorney, Mr. Joseph H. A. Rogan.

The Court: You mentioned interest. Interest from when to when?

The Witness: From the due date, which would be in 1948 to the date of payment in 1949.

The Court: While your account was attached?

The Witness: That's correct, sir.

Mr. Kiendl: May I have Government's Exhibit 340?

Q. Mr. Klein, I show you the bank account record of the Tivoli Trading Company, Royal Bank of Canada [7496] in Montreal, Quebec, and I direct your attention to certain checks that appear in that account, one for $264,162.70 to the order of La Economica Agencias, dated March 27, 1947, another to the order of Economica Agencias for exactly the same amount and dated exactly the same date, and the third to the order of Compania Exportadora Fernandina for $272,423.62 dated the same day. A. Yes, sir.

Q. Do you recall where you were on March 27, 1947? A. In Montreal.

Q. Was Mr. Rokoff there with you? A. Rokoff, Rosenberg, I. J. Klein, A. L. McLennan and myself.

Q. Can you tell us whether or not Tivoli Trading Company came to an end, so far as operations were concerned, on that day? A. It actually did come to an end on operations on that day. The account was closed and balances transferred to Hannes & Co., S. A.

Q. The statement of the account contained in this Government's 340, shows that on March 27th a balance of 802,000 some odd dollars was withdrawn, [7497] leaving nothing in that account. A. That is correct, sir.

Q. Thereafter, was there any account ever maintained for the Tivoli Trading Corporation in any bank anywhere? A. No, sir.

Q. That balance of $802,000 was covered by a check in the file to Tivoli Trading Company, signed by you as president, to the order of the Royal Bank of Canada for that amount of money? A. That's correct.

Q. And you say that went into the account of Hannes & Co.? A. I believe so, sir.

Q. And from March 27, 1947, did Hannes & Co. do any business of any substantial amount? A. It didn't do any business at all.

Q. It didn't do any business at all? A. Never had a chance to get started.

Q. What became of Tivoli? Was it sold to Hannes & Co. or were its assets transferred to Hannes & Co.? What became of it? A. Well, it was by an exchange of stock.

Q. Just tell us what stock was exchanged and by [7498] what companies. A. The stock of Tivoli Trading

Company. 2850 shares, 2850 shares that were actually in my name were transferred. Hannes & Co. made an offer to Tivoli, offering to exchange 15,000 shares of its stock for the 2850 shares of Tivoli stock, and the Tivoli stock was endorsed over to Hannes & Co.

Q. And canceled that very day, March 27, 1947? A. Yes, sir.

Q. And those are the stock certificates that you have already seen? A. Yes.

Q. Identified them and put in evidence? A. Yes, sir.

Q. Now prior to the date which those checks bear, the two checks to Economica and the one check to Fernandina — prior to the date of March 27th did you have any talk with Mr. Alprin and Mr. Roer or Mr. Koerner about those checks? A. Yes, I did, sir.

Q. Do you remember when it was, where it was? A. My best recollection is that it was in Baltimore, and it would be also my recollection that undoubtedly the early part of March or thereabouts.

[7499] Q. Before you went to Canada, of course. A. That's correct, sir.

Q. With whom did you have the discussions? With each one of them or with all three? How was it? A. My recollection is with all three of them.

Q. And if it were in Baltimore, was it in your office? A. Yes, sir.

Q. And will you tell us what you recall the substance of the conversations you had with them on that occasion was?

Mr. Bender: The defendant Haas objects to the conversations on the ground they are not binding as to him.

The Court: Sustained.

The Witness: Would you repeat that question?

(Question read.)

A. To the effect that Tivoli Trading Company was being liquidated and that I wanted to get all tag-ends cleaned up and that we were going to issue checks in payment of the bonus to them, predicated on a conversation that we had had some years ago—some years previously, and it was then that one of them in the course of the conversation—now they weren't all [7500] there at one time; Mr. Roer might have been there one day, Mr. Alprin and Mr. Koerner might have come down together or not, I don't recall—but in any event they asked that the checks be made out to their respective companies. Mr. Koerner asked that his check be made out to Mr. Alprin's company. I turned to Mr. Rosenburg and said to him, "Is there anything wrong with that, Ellis?"

He said, "No. You can make the check out to any nominee of theirs that they want it to."

And that is how the checks are made out to their particular company.

Q. When you turned to Mr. Rosenberg and had that conversation with him, he told you you could make them out to anybody they wanted to, did you turn to Mr. Koerner and say you would make it out to his company or to any company he wanted it made out to? A. Well, Mr. Koerner wanted it made out to Mr. Alprin's company. He didn't want it made out to his company.

[7501] Q. I see. Did he say why? A. I only remember part of it to the extent that he didn't want Mr. Jacobs to know about it.

Q. And was he present when you spoke to Mr. Rosenberg and got the advice from Mr. Rosenberg that you have told us about? A. One of them was present. I don't recall——

Q. You don't recall whether it was Mr. Koerner or who? A. No, I do not, sir.

Q. In accordance with that conversation were the checks made out in Baltimore or did you wait until you got to Canada to make them out? A. Well; they were drafts on New York so they were made out in Montreal.

Q. They were bank drafts on the Royal Bank of Canada? A. That's correct, and payable in New York funds.

Q. And do you recall how the amounts were calculated? A. On a per-cents-per-case basis that I mentioned sometime today. That Roer was predicated on his own sales while Mr. Koerner's and Mr. Alprin's were calculated on the basis of national sales, their percentage amount being considerably smaller than Mr. Roer's.

[7502] Q. Mr. Klein, in this file there are two checks dated that same day, two bank drafts to the order of Mr. Rosenberg for $600 each. Do you recall what they were for? A. If in that amount I would say they were expense accounts.

Q. Now, Mr. Klein, did there come a time in March of——

The Court: Excuse me. Mr. Kiendl, does this present an appropriate breaking-off point?

Mr. Kiendl: A very excellent one.

The Court: All right. Then I am going to ask counsel to remain, but the jury is excused now until 10.30 tomorrow morning.

* * *

[7506] New York, July 28, 1955,
10:30 o'clock a. m.

TRIAL RESUMED

(Jury present.)

Mr. Kiendl: These are all our exhibits due to the Court (handing to the Court).

HYMAN HARVEY KLEIN resumed the stand.

Direct examination continued by Mr. Kiendl:

Q. By the way, Mr. Klein, I did not ask you yesterday, were you born in the United States? A. Yes.

Q. And have you always been a citizen of the United States all your life? A. Yes.

Q. Even while you were engaged in business up in Canada? A. Yes.

Q. Yesterday we reached the point where we were asking questions about the three large checks for [7507] $264,000 and $272,000, two to Economica and one to Fernandina. You recall those checks? A. Yes.

Q. I don't think you told us what you did with those checks after they were issued in Canada. Did you deliver them to any individual? A. Yes, sir.

Q. Will you tell us, did you deliver any one of them to Mr. Alprin? A. Yes, I delivered both of them.

Q. Which did you deliver to Mr. Alprin? A. The two checks made payable to Economica Agencias, in my office in Baltimore.

Q. Were those the two checks for precisely the same amount of money? A. Yes.

Q. Both drawn to the order of Economica? A. That's correct.

Q. When you delivered those checks to Mr. Alprin in your office in Baltimore did you have a conversation with him about it? A. Mr. Koerner I believe was with him at the time.

Q. He was? A. I think he was.

Q. Did you have a conversation with them about it? A. Only to the extent that we were happy to give them the checks.

[7508] Q. Did you tell them what it was? A. Yes, a bonus predicated on the oral understanding we had had previously, and that we were happy to give it to them for the good job that was done and the terrific success that Harwood had made.

Q. What had Mr. Alprin done in connection with the success of the Harwood deal? A. Mr. Alprin, being an attorney and being an expert in the liquor field, liquor regulations particularly, in the various states of the United States where Harwood had been shipped there was always some technicality of some kind or another which arose at one time or another, not consistently, of course, but I would say that he did a tremendous amount of work and did an extremely efficient job of obtaining releases, for example, in the State of California, which had a regulation in relation to a certain type of bottle or certain stamps should be affixed a certain way, and they weren't, the State stamp, for example. He was able through his knowledge and efficiency to get a car released when it was tied up by the State Liquor Authority and so on.

[7509] Q. Had you discussed that with your brother and with your two associates, Mr. McLennan and Mr. Norgan? A. I don't believe Mr. Norgan, but Mr. McLennan and my brother.

Q. And did they agree with you in your conclusions as to what Mr. Alprin had done that justified a payment of this amount of money to him?

Mr. Bauman: Your Honor, I object to the leading of the witness. If Mr. Kiendl wishes to elicit these conversations I suggest that on direct examination he ask what the conversation was rather than having Mr. Kiendl testify.

The Court: Sustained.

Q. Will you tell us what you said to your brother and your two Canadian associates on that subject, Mr. Klein? A. Only, Mr. Kiendl, that what Mr. Alprin did, which they were familiar with from time to time—they knew the car was being tied up in a certain market.

Mr. Bauman: I move to strike that last out.

The Court: Denied.

A. (Continuing) That the car was tied up in a [7510] certain market and that therefore Mr. Alprin had obtained the car release. I believe on many occasions they wrote Mr. Alprin.

Q. Now what had Mr. Koerner done in connection with that enterprise that in your opinion justified the payment of that amount of money? A. Similarly in the case of Mr. Koerner as in the case of Mr. Alprin there was an oral

understanding that if a good job was done they would get X cents per case. The exact amount I don't recall, but obviously it must have been an odd amount because the checks were in odd amounts. But in any event he was the sales manager for R. C. Williams, he had performed a miraculous job, I think, in selling more Harwood than we ever anticipated could be sold in the United States and in accordance with our oral understanding we felt that he was justly entitled to what he received.

Q. Now in connection with that conversation in Baltimore with Mr. Koerner and Mr. Alprin when you delivered these checks you knew that they were bank drafts on the Royal Bank of Canada? A. We obtained them.

Q. Now why did you obtain bank drafts instead [7511] of issuing ordinary checks of Tivoli Corporation? A. Well, Tivoli was bringing its business to a conclusion, sir, and I had sold out Tivoli— I had sold out rather my interest in the foreign companies with the exception of Tivoli, and Tivoli was then closing out its entire operation by the—I think it was March the 27th of 1947, and in order to clean up all tag ends we would have to give him a draft. If we gave him a check it would automatically, if it didn't clear immediately and I was in Montreal at the time by giving him the draft it immediately is charged to the account rather than give him a corporate check in which case it would not be immediately charged to the account.

Q. So that the account would be held open until the draft was paid? A. Yes.

Q. If there were an ordinary check of the Tivoli Bank account? A. That is right, sir.

Q. Now what did you do with the check to the order of Fernandina? A. Mr. Roer came to Baltimore and received that check.

Q. Did you have a conversation with him? [7512] A. We were very pleased to pay Mr. Roer.

Q. Did you have a conversation with him? A. Yes, sir. He was an extremely, an extremely able salesman, one who had worked very hard and diligently.

Mr. Bauman: Your Honor, I object to this. The question was: Did you have a conversation with Mr. Roer. This is the answer that is elicited. I object to it.

The Court: Is that what you told him?

The Witness: Yes.

The Court: All right, objection overruled.

A. (Continuing) That he had worked very hard and diligently in establishing the brand of Harwood in its first of its operation and that we were very pleased to give him the check in question.

Q. In addition to telling him what you have just told us, Mr. Klein, did you know from your daily experience during the years 1944, 1945 and 1946 what the result of Mr. Roer's efforts as a salesman were? A. In the year of 1944 Mr. Roer covered a wide swathe of the United States. He covered practically every state in the union in its effort to establish the brand Harwood. And in 1945 his territory wasn't [7513] as large but he certainly did a magnificent job. I would call him "Carload Roer" personally.

Q. Did anybody else call him that? A. I don't know what anybody else called him, sir.

Q. Now in connection with your conversation with Mr. Alprin and Mr. Koerner in Baltimore, did you give Mr. Alprin or Mr. Koerner any instructions as to what they should do with their checks? A. I have no recollection, sir, of telling them anything about their checks, but with the exception that I may have told them because of the OPA having served—being in the bank "I wouldn't be in a hurry to use it if I were you."

Mr. Bauman: May I have that answer read, your Honor?

Mr Kiendl: Surely.

(Answer read.)

Q. Did you make any suggestion that Mr. Alprin deposit this check, this bank draft for $264,000 in the Royal Bank of Canada in Toronto? A. No, sir.

Q. Did you know the branch manager of the Royal Bank of Canada in Toronto? [7514] A. No, sir.

Q. Had you ever been in the bank, the Royal Bank of Canada in Toronto during the years from 1944 to the time you delivered this check? A. I haven't been in that bank since 1944 to this very date.

Q. Now in this conversation that you had with Mr. Alprin and Mr. Koerner there has been some testimony in this case to the effect that you delivered a check to Mr. Alprin in the bathroom or the washroom of your office. Did that take place? A. No, it did not, sir. To begin with——

Q. Let me ask you: What is the situation so far as your office in Baltimore is concerned? Did you have a private room of your own? A. Yes.

Q. As president of Harvey Company? A. Yes, I did, sir.

Q. Was there any reason why you couldn't deliver that check to Mr. Alprin in your own private room that you know of? A. None whatever, sir.

Q. And did you have a washroom or bathroom in that office? [7515] A. I had a small basin the size of a little—my office represented about 18 x 22 in size. The room is about a foot narrower than that and as wide as from here to this railing right here. It has a wash basin, a hand wash basin in this corner and has a little metal cabinet basin in that wall and has a door walking in that way (indicating) and a mirror on that wall. Now I don't know why I would give anybody a check in that room and I only——

Q. Irrespective of the reason why or why not what is the fact? Did you deliver any check to Mr. Alprin or Mr. Koerner surreptitiously outside of your office taking them into any secret place? A. No, sir.

Q. At any time? A. No, sir.

Q. Now in that conversation with Mr. Alprin and Mr. Koerner did you state or suggest that the moneys were being paid in liquidation of their stockholding interests in Tivoli or anything to that effect? A. No, sir.

Q. Did you know that Mr. Alprin's check was in fact deposited in the bank account in Canada, the Royal Bank of Canada in Toronto? A. No, I did not, sir.

[7516] Q. Did you know that the proceeds of that bank draft in Mr. Alprin's account in Toronto were frozen by the Canadian authorities for a period of almost two years? A. Yes, sir, I did learn that.

Q. Did he tell you that? A. I believe he did, sir.

Q. Did you learn that the proceeds of that check were unfrozen at the end of that time? A. Well, I had a personal bank account in Vancouver, a savings account, and another account in Montreal, the proceeds of an insurance policy on my father's estate that were also frozen, as well as the account of Hannes & Company, and when those accounts were unfrozen I believe he told me that his account was unfrozen.

Q. And at that time did you give him any instructions or orders or directions as to what he should do with the proceeds of that check? A. No, sir.

Q. Did you learn at any time that Mr. Alprin had taken the check to Toronto and split it up into three accounts or three Cuban corporations that he owned or controlled? [7517] A. No, I did not.

Q. Did you know what he did with the check of Mr. Koerner—for Mr. Koerner? A. I learned that subsequently, sir.

Q. And did you have anything to do with any negotiations with an attorney named Mr. Glassgold regarding the deposit of the Koerner check in a safe deposit box in escrow? A. No, I did not, sir.

Q. Awaiting your instructions? A. No, I did not, sir.

[7518] Q. Do you know what Mr. Roer did with the check of Fernandina? A. Up to what time, sir?

Q. At any time after he received it, do you know whether he deposited it in any bank account? A. I only learned he deposited it through the bank, the Royal Bank of Canada in Montreal.

Q. Did he tell you that he deposited it in March 1947 or thereafter? A. I don't think that Mr. Roer told me at any time when he deposited his check.

Q. However, you did learn at some time he deposited it? A. Yes, when I was in the Royal Bank of Canada in Montreal in 1952.

Q. Did you learn that he had deposited that check in the New York agency of the Bank of Nova Scotia? A. No, I did not.

Q. When you had a conversation with him, did you say or suggest to him that you were making that payment to Fernandina for his account in liquidation or partial liquidation of any corporation, Tivoli or any other? A. For his account, sir?

Q. Yes. [7519] A. No, not for his account. As I mentioned yesterday, I may have told him that I am liquidating Tivoli and I wanted to get rid of the obligation to him, but certainly not for his account.

Q. Mr. Klein, when you delivered these checks, these three checks dated March 27, 1947, did you at that time know that you or your companies were involved in any tax difficulties whatsoever? A. No, sir, I did not.

Q. Did you have any intimation or suggestion that the Internal Revenue Service was even investigating your income tax situation or that of your companies? A. No, sir.

Q. When for the first time did you have any such intimation or suggestion? A. In June 1947, when the Bureau of Internal Revenue served a subpoena on the Royal Bank of Canada.

Q. Did you know whether that subpoena called for the production of all the bank records of a number of these corporations? A. It called for the bank records of my own and some various companies, the names of which I don't recall.

Q. How did you learn about that? From the bank? [7520] A. From the bank.

Q. Or from the bank's attorneys? A. From the bank, I believe.

Q. From the bank? A. Yes, sir.

Q. What did you do about it? A. I immediately went to Root, Ballantine, Harlan, Busby & Palmer and employed them to represent me.

Q. Who for that firm acted at that time? A. John Harlan and Ethan Alyea.

Q. Is John Harlan the attorney who was recently appointed a justice to the United States Supreme Court? A. Yes.

Q. You retained them in June 1947? A. Yes.

Q. On account of the information and notice you had received from your bank, the Royal Bank of Canada? A. That's correct.

Q. Until that time did you in your own mind think there was any tax difficulty of any kind, character or description that involved you or involved these corporations? A. No, sir.

[7521] Q. Did there come a time in connection with the check you delivered to Roerner where you had a conversation with him, in which you mentioned you were having a little trouble with your income tax situation and that you didn't want him to deposit that check until you straightened out that difficulty? A. In what period?

Q. Any period. A. No, I did not.

Q. There has been some testimony here to the effect that Mr. Alprin didn't give Mr. Koerner his check because of something that you told Mr. Alprin. Did you give Mr. Alprin any instructions to withhold the second Economica check from Mr. Koerner at any time? A. No, sir, I did not.

D. Did you have any talk with Mr. Koerner at any time after the checks were delivered to Mr. Alprin and Mr. Koerner about Koerner's check? A. Yes, many of them, from 1949 practically to the early part of 1952, I believe.

Q. Will you tell us what the substance of those conversations was about. A. In substance they were practically all the [7522] same, he couldn't obtain a check from Mr. Alprin, and that Morris wouldn't endorse the check for him, and couldn't I cancel that check and reissue a new one on Hannes & Co.

I told him no, that wasn't possible, and that he asked the check to be made out to Mr. Alprin, and his problem in connection with the check was with Mr. Alprin and not with me.

Q. At that time had Tivoli been completely liquidated? A. It had been completely liquidated March 27, 1947.

Mr. Kiendl: May I have Exhibit 340 again, please.

(Document handed to Mr. Kiendl.)

Q. Mr. Klein, in addition to the three checks that I have been inquiring about, in the bank records of the Royal Bank of Canada, Tivoli Trading Company, account, there are two checks—two bank drafts, one to the order of the Compania La Ribera for $35,000——

Mr. Kiendl: May I withdraw that question, your Honor?

Q. There is a Tivoli Trading Company check to the order of La Ribera for $35,000, dated February 24, 1947,

and a check of Tivoli Trading Company to [7523] Nancy Trading Company for $55,000. Are you familiar with those two checks? A. Yes.

Q. The check for $55,000, signed by you as president? A. Yes.

Q. What was that for? A. That represents a bonus to Mr. Rosenberg because he had only received a nominal salary during this entire period, and this $55,000 check in question represented a bonus.

Q. What had he done in connection with the successful outcome of the Harwood situation? A. Mr. Rosenberg had traveled eighteen or nineteen times to Cuba, spent from two or three weeks at a time there on many occasions. He had on many occasions flown to Panama, Venezuela, covered a survey of Central and South America in those areas. He had done a tremendous amount of traveling during that period by air. As a matter of fact, on one occasion he had rather a bad time of it.

Q. What about this check for $55,000 dated the same day—I think it is the same day, it is hard to read—the same day as the check to the Nancy Trading [7524] Company? A. That check was made payable to La Ribera at Mr. Haas's request——

The Court: $55,000 check?

Mr. Kiendl: $35,000.

The Court: You'd better read it. I want to make sure I am not confused.

(Question read.)

Mr. Kiendl: It should be $35,000.

The Witness: Would you please read my answer as far as I went.

(Answer read.)

A. (continuing) —at Mr. Haas's request, as a loan which I very willingly gave him, expecting no repayment, feeling that he would render services in due course to take care of it.

Q. Had he rendered some services for which he had not been compensated? A. Yes, he had rendered services in connection with my selling out of my interests in the foreign companies, and since I was moving my offices, and anticipated moving my offices to New York, I retained him or his firm as our accountants, and consequently he would have worked it off.

[7525] Q. Mr. Klein, there has been testimony here to the effect that Mr. Alprin at one time said to Mr. Haas that you had given Mr. Koerner's draft to Mr. Alprin because you did not trust Mr. Koerner. Did anything of that kind ever take place? A. No, it did not.

Q. Mr. Haas has testified that he attempted to repay this $35,000 at some time and that you refused to accept it. What is the fact regarding that, if you recall? A. As I recall, Mr. Haas, in his testimony, also said that he deposited that check in Toronto. It was frozen. I don't make this as a positive assertion, if he did offer those funds back to me, it was offered in 1949, after he had performed a great deal of work as both an accountant and as an attorney in connection with the jeopardy assessment during 1948 and, as a matter of fact, subsequently asked for a great deal more as a fee than the $35,000 represented.

Q. Can you tell us whether or not he actually offered to repay that loan or whether you recollect that he offered to? A. I don't have a positive recollection about [7526] that, sir.

Q. Did Mr. Haas consult you concerning his preparation of Mr. Alprin's 1947 income tax return? A. Not at any time.

Q. Did he consult you regarding any income tax return that he ever prepared for Mr. Alprin? A. No, sir, he did not.

Mr. Kiendl: May I have our Exhibits DQ, DR and DS.

I am sorry, your Honor, they seem to be mislaid for the moment.

The Court: I can lend you my copies.

Mr. Kiendl: Then I would also like DT, DU and DV, as well, your Honor.

The Court: All right (handing papers).

Q. You remember the third day of March 1948, do you not? A. I will never forget it.

Q. Is that the date you were served with these statements of income tax due that I now show you, Defendant Klein's Exhibits DQ, DR and DS? A. With the exception that they weren't altogether.

Q. They were served on you one at a time? A. Individually. They weren't served in sheets, [7527] they were all cut.

The Court: I didn't hear you.

The Witness: They were all cut. These are photostated on one sheet.

The Court: In other words, they were in thirds?

The Witness: There were six. Three were delivered to my wife at my apartment.

Q. The same day? A. The same day.

Q. As I understand it, Mr. Klein, on that day the statement of income tax due from H. Harvey Klein, Ltd. was served on you as president of that company. A. That's correct.

Q. In three sheets, each one a separate statement for a separate year? A. That's correct.

Q. The top one on here is for 1944, the middle one for 1945 and the bottom one for 1946; they were separated into three sheets when they were served on you? A. That's correct.

Q. Is the same thing true regarding income tax due from you, Defendant Klein's Exhibit DR, three [7528] sheets, one for each year of 1944, 1945 and 1946? A. That's correct.

Q. And the one served on your wife, the service on your wife, consisted of the service of three similar sheets? A. That's correct.

Q. Defendant Klein's Exhibit DS, one is for 1944, one for 1945 and one for 1946? A. That's correct.

Q. When you returned home that night you found out she had been served? A. She had been served about four o'clock or approximately four o'clock on March 3rd. The papers were on the street thirty minutes after they were served on me.

Q. The what? A. The newspapers were on the street thirty minutes after they were served on me.

The Court: Strike out the answer.

Read the question to the witness.

(Question read.)

Q. Do you know where there was newspaper publicity about the service of those statements the same day?

[7529] The Court: Just a moment. Do you want an answer to the first question or are you withdrawing it? You haven't given the witness an opportunity to answer the question.

Mr. Kiendl: I am sorry, your Honor. I will withdraw the last question.

The Court: Let us start from the beginning of that phase of it.

Read the question to the witness.

(The reporter read the question as follows:

"Q. When you returned home that night you found out she had been served?") A. No, she telephoned me while I was at my office.

Q. During that day did you find out whether there was any publicity about the service of these statements?

[7530] Mr. Bauman: I object to that question. It has no bearing on this case at all.

The Court: Overruled.

A. Yes, sir, 30 minutes after the jeopardy assessment was handed to me by two representatives of the Internal Revenue Bureau in my office there were streamers out on the street, three-inch streamers on the headlines of the newspapers.

Q. Did you, Mr. Klein, ask the two men who served these statements on you as president of H. Harvey Company what it was about? A. I certainly did, sir, and they couldn't give me an answer, they didn't know.

Q. Did you look at the statements and read them when they were served on you? A. I did, sir, but I must admit——

The Court: Strike out everything beyond "I did." You were merely asked if you looked at the statements and read them. A. I did.

Q. When you read them, did you see that fraud penalties were assessed against you to the tune of almost $1,700,000? A. I don't believe I stopped to total it.

[7531] Q. At some time did you examine them to ascertain that that was the fact? A. Very carefully.

Q. Is the same true regarding the statement of income taxes due from your wife, did you at some time study them carefully to see the amounts that were assessed against her? A. Yes.

Q. And the amounts that were assessed against the H. Harvey Company? A. Yes, sir.

Q. Did you notice in studying these statements that the penalties were assessed against you and not against the H. Harvey Company or against our wife? A. That's correct.

Q. Thereafter were you served with the so-called 90-day letters, Defendant Klein's Exhibits DT, DU and DV? A. Yes, sir.

Q. Mr. Klein, I show you your income tax return for the year 1947 and ask you to tell us the circumstances under which that was prepared, signed and filed by you (handing to witness)? A. Since the jeopardy assessments had been made on March 3, 1948, and income taxes were due on March [7532] 15, 1948, representing the year 1947, I believe there was a temporary income tax return made on March 15.

Q. That is the temporary return that has been offered in evidence as one of the Government exhibits here? A. I believe so.

Mr. Kiendl: May I have Government's Exhibit 354.

The Court: I believe that was stricken.

Q. You did write a letter asking for an extension of time, which was granted? A. Yes, a letter was written asking for an extension of time which was granted. Then a discussion took place between Root, Ballantine, partly with McGuigan and Kilcullen, and with Mr. Haas, in the preparation of this return. This return was finally filed on May 17, 1948, according to the stamp here, which says received on that date.

Q. Was that within the time to which it was extended? A. Yes, it was.

Q. In that return there is a notation above your signature that it was in accordance with the advice [7533] and instructions of counsel. Do you see that? A. Yes, I do.

Q. Do you know whether that was there when you signed it? A. Undoubtedly, sir. My signature goes right over the top, although at the time I was interrogated by

Victory and McCarthy I don't even remember it being there.

Q. Was this in fact filed in accordance with the advice and instructions of counsel? A. Yes, sir.

Q. Who were the counsel who advised and instructed you? A. It was a combination of Root, Ballantine, and McGuigan and Kilcullen and Mr. Haas.

Q. In that income tax return you notice there is a note, a rider, "The Collector has a levy on all of the taxpayer's funds and for that reason he is unable to pay the balance due as shown by this tax return."

Was that there when the return was filed? A. I would say yes, sir.

Q. In this return there is another rider, which I cannot find for the minute, which I show you.

[7534] Was that rider attached to the return when it was filed on the advice and instructions of your counsel? A. Yes, it was.

Q. And that concerns Tivoli and Hannes & Company, does it not? A. Yes, it does.

Q. And concludes with the statement "It is expected that the questions raised by the Canadian Government will be finally determined before the close of 1948 and it will be possible at that time to determine the amount to liquidate and discharge the liabilities of Hannes & Co., S.A. When that has been done, it is the intention of the taxpayer to liquidate Hannes & Company, S.A., at which time the taxpayer's gain, if any, will be returned for taxation."

Has Hannes & Company ever been liquidated completely? A. No, sir.

Q. The situation regarding the jeopardy assessment and the levies made under those jeopardy assessments continues today just as it was? A. Yes, up to this very moment.

[7535] Q. Those levies have never been withdrawn? A. No, sir.

Q. As against your wife? A. No.

Q. As against your company? A. No.

Q. Or as against you? A. No, sir.

Q. They have never been canceled? A. Never.

Q. After you received the 90-day letter, did you employ attorneys to represent you in order to file a petition in the Tax Court for a redetermination of your tax assessments? A. I did.

Q. Is that still pending in the Tax Court of the United States? A. It is.

Q. Under the jeopardy assessment and levies made under it, were your bank accounts or any of your securities levied on it? A. All of them, sir, approximately $600,000 in cash, I believe better than $2,000,000 worth of securities, and as late as five months ago they threatened to sell my home.

Q. Mr. Klein did you have a conversation with Mr. Roer in the fall of 1951, as you were walking up Fifth Avenue? A. Yes.

[7536] Q. You recall hearing that conversation being read from your statement? A. I do, sir.

Q. Will you tell us now what that conversation was with Mr. Roer? A. Mr. Roer had met me at the hotel that I was stopping at, and I don't recall whether we had breakfast together or not. Mr. Rosenberg was present.

We were walking down Fifth Avenue, and Mr. Rosenberg was walking just a little ahead of me, and Mr. Roer was asking me whether I couldn't give him a letter, his accountant had requested that I give him a letter stating that the check he had received was in partial or liquidating dividend in so far as it affected Tivoli Trading Company. Mr. Rosenberg being slightly hard of hearing, and being a little ahead of me, I called him back and said, "Ellis, come back here, don't walk so fast."

And then I said, "Al, repeat to Ellis what you just told me." Which he did.

Mr. Rosenberg gave him a quizzical sort of look, and I said to Al, "That is not possible, you know that is not a fact." That is where the conversation dropped.

[7537] Q. At that time, in the fall of 1951, had there been any indictment against you or Mr. Roer or against anybody else in connection with this Harwood picture? A. In the fall of 1951?

Q. Yes, when you had this conversation with Mr. Roer. A. No, sir.

Q. Did there come a time in March 1952 when you had a conversation with Mr. Alprin by long distance phone from New York to Los Angeles? A. I believe he did call me at my home, yes, sir, the morning I arrived in Los Angeles.

[7538] Q. And I show you this document and ask you if you can refresh your recollection from that as to whether or not that long distance telephone conversation occurred in the early part of March 1952 (handing).

Mr. Bauman: He hasn't exhausted his recollection as yet and I submit that he shouldn't be reading that document until he says he has no recollection as to what the conversation was. I object to his reading the document, your Honor.

The Court: (To the reporter) Will you read Mr. Kiendl's earlier question back—well, all right, never mind.

Mr. Kiendl, do you recall when you framed the question did you ask Mr. Klein whether in early March of 1952 he had a conversation?

Mr. Kiendl: I did, your Honor.

The Court: And he said yes.

Mr. Kiendl: That's right.

The Court: Then what does he have to refresh his recollection so far as the time is concerned?

Mr. Kiendl: We are going to offer them in evidence. I wanted him to read them and identify [7539] them. It is just a shortcut.

The Court: All right, the objection is sustained.

Q. Did you receive a letter from Mr. Alprin on the subject of that conversation? A. I did, sir.

Q. And is this the letter before you now that you received dated March 4th, 1952? A. It is, sir.

Q. And did you instruct your attorneys to reply to that letter? A. I did, sir.

Q. And did they reply? A. They did.

Q. And is this a copy of the letter which they sent to Mr. Alprin under date of March 12, 1952? A. That's correct, sir.

Q. And did you know whether or not Mr. Alprin replied to their letter by his letter of March 19, 1952, the original of which I now show you? A. I was told of it, sir.

Mr. Kiendl: I offer those three letters in evidence.

Mr. Bauman: The Government has no objection, your Honor.

[7540] Mr. Bender: The defendant Haas, your Honor, will object to these three letters on the ground they are not binding as to him.

Mr. Donohue: The defendant Alprin urges their acceptance in evidence, if your Honor pleases.

The Court: May I see them?

Mr. Bender, these letters have to do with the check of which Haas was partial custodian according to his own statement before the Internal Revenue.

Mr. Bender: That is correct, your Honor.

The Court: Overruled.

(Marked Defendant Klein's Exhibit EZ in evidence.)

Mr. Bauman: Would your Honor be inclined to have those exhibits numbered EZ-1, EZ-2 and EZ-3, because I think reference may be made to them variously.

The Court: All right, then, let's do it that way.

(Remarked Defendant Klein's Exhibits EZ-1, EZ-2 and EZ-3 in evidence.)

The Court: Now which one is 1? The letter from whom to whom?

The Clerk: From Mr. Alprin to Mr. Klein, [7541] March 4th.

The Court: March 4th what year?

The Clerk: 1952.

The Court: All right, now, which one is 2?

The Clerk: The letter from McGuigan & Kilcullen to Alprin of March 12th.

The Court: All right, and the other one?

The Clerk: And the letter of March 19, 1952 from Alprin to McGuigan & Kilcullen.

The Court: All right. Thank you.

Mr. Kiendl: While the Court Clerk is entering that may I ask a question, your Honor?

The Court: Surely.

Q. You had a conversation with Mr. Alprin you have already testified? A. (Witness nods.)

Q. From New York to Los Angeles? A. Yes.

Q. Prior to the sending and receipt of those letters that have been offered in evidence here? A. Yes.

Q. Will you tell us the substance of that conversation, Mr. Klein? A. I don't recall it in detail other than the [7542] fact that I believe—and I wouldn't swear with certainty that he said he was going to report it as a capital gain, and I made some comment to the effect that he better get himself a good tax man.

Q. Is that all that you remember of the conversation? A. That is about all that I do remember of the conversation.

Q. At that time in March of 1952 was there any indictment pending against you or anybody else in connection with this situation? A. No, sir.

Q. Now did you at any time tell Mr. Alprin or anyone else that you had finally released any one of these three checks or all of them? A. No, sir.

Mr. Kiendl: May I read these to the jury, your Honor?

This is a letter on the letterhead of Maurice O. Alprin of March 4, 1952 addressed to Mr. Klein at his address in Los Angeles (reading).

The next letter, EZ-2, a carbon copy of a letter from Mr. McGuigan on the letterhead of McGuigan & Kilcullen to Mr. Alprin, dated March 12, [7543] 1952 (reading).

And the final letter, EZ-3, is a letter on the letterhead of Mr. Alprin addressed to McGuigan & Kilcullen and reads as follows (reading).

The Court: There will be a ten minute recess.

(The jury left the courtroom.)

The Court: Now this may be off the record.

(Discussion off the record.)

(Short recess.)

By Mr. Kiendl:

Q. Mr. Klein, prior to the exchange of the correspondence, the letters between you and Mr. Alprin and McGuigan & Kilcullen and Mr. Alprin that have just been received in evidence, did you get any information at any

time regarding whether any of these drafts were outstanding, the two to Economica and the one to Fernandina? A Yes, I did.

Q. When did you receive that information, approximately? A. In the early part of March, 1952, I believe it was or it might have been the early part of February. [7544] I don't recall exactly. But I was in Montreal in company with Mr. Rosenberg.

Q. In one of these letters Mr. Alprin refers to a telephone conversation on February 29th. A. Then it would be the early part of February, sir.

Q. It was prior to that telephone conversation in any event? A. Yes, it was.

Q. And you were in Montreal and what did you learn there regarding these drafts? A. I went to Montreal on one of my usual business trips and Mr. Rosenberg accompanied me and in the Royal Bank Mr. McLaughlin, who was then the manager of the main branch of the Royal Bank of Canada in Montreal in the course of conversation said, "Do you know there is a draft outstanding that hasn't been cashed?"

And I said, "No, I don't. Do you know whose it is?"

He said, "No, but I can easily ascertain it," and he buzzed for someone to come in and asked the question, wanted to know what draft it was, the name of the corporation, and in a little while, oh [7545] probably 10 or 15 minutes later, a gentleman returned with the information that there is a draft outstanding in the name of Economia Agencias and that the laws of Canada being that a draft issued by a bank is good for five years—it is good forever as a matter of fact but in so far as this bank being able

to pay it the laws being, the banking laws being that they must at the end of five years send the money over to the Bank of Canada and the payee of the said draft has to apply in person to obtain the funds. There is no difficulty in obtaining the funds other than the fact that he present the proper credentials and so on. And he said, "The five-year period soon elapses on this here draft and if you know who it is I think you should tell him to either come in and get a new draft, which they can do, in exchange for that draft which again makes that draft good for another five years, or deposit it or use it in some form or another."

I said, "Is there anything else?"

This gentleman who was standing there said, "No, all these drafts I believe have been used."

And on my return to New York when we finally [7546] came in to New York I asked Mr. Rosenberg if he had anything to do that particular morning and he said no.

I said, "It would be a good idea if you would go over and tell Morris that this draft if not used the funds will go to the Bank of Canada," and tell him what he had heard Mr. McLaughlin tell me. That's the sum and substance.

Mr. Kiendl: You may cross-examine, Mr. Bauman.

Cross Examination by Mr. Bauman:

Q. Mr. Klein, I am reading the statement contained in 350 in evidence, which is your 1947 tax return, and that statement says that the Collector has levied on all of the taxpayer's funds and for that reason he is unable to pay the balance due as shown on this tax return.

Do you remember that? A. Yes.

Q. And it was for that reason that you did not pay the $8,152.08 that was due according to your computation on the 1947 income tax return, is that correct? A. Yes, sir.

[7547] Q. That you did not have—that the Collector had levied on all of your funds and for that reason you were unable to pay the balance due, is that right? A. (Witness nods.)

Q. And as I understand it you have indicated that here in court yesterday and today, is that correct, that the Collector has levied on all of your funds? A. That is right, sir.

Q. Now, at the time that you made that return, which was in May of 1948, you had, did you not, over $2,000,000 in United States certificate of indebtedness, is that not the fact? A. I think it is.

Q. Now yesterday you testified, Mr. Klein,—and correct me if I am wrong—that when you received those checks upon the settlement of your interests in these Canadian corportions—you remember that? A. Yes, sir.

Q. —that you deposited them in a bank, is that correct? A. That is right.

Q. Now you deposited them in various banks—[7548] and I believe you said various banks yesterday; I don't take that question literally—on January 28, 1947 in the Central Hanover Bank & Trust Company, the Royal Bank of Canada, Montreal and Pennsylvania Exchange Bank, and on February 14, 1947 in the Continental Bank & Trust Company, is that correct? A. If your record so states, Mr. Bauman.

Q. Well, what is your recollection? A. I don't have that complete recollection.

Q. Do you remember depositing the money in those banks? A. I think you are correct, sir.

[7549] Q. Between January 30, 1947 and March 25, 1947 you used $2,737,108 to buy U. S. certificates of indebtedness, is that correct? A. If your records so state, yes, sir.

Q. What is your recollection? A. I don't remember the exact amount.

Q. Does that sound right to you? A. I would think that is approximately right.

Q. Did you buy almost $3 million of certificates of indebtedness with the proceeds of the sale of your stock in Cuban and Panamanian corporations? A. I would say so.

Q. Did you continue to hold those U. S. certificates of indebtedness throughout the year 1947? A. No. Some were sold for the purpose of paying quarterly instalments on income tax.

Q. You did pay quarterly instalments on income tax totaling $1.2 million, is that correct? A. That's correct.

Q. And you paid that from the proceeds of the sale of this stock, is that correct? A. The sale of some of the bonds as well.

Q. You used $628,440 to buy 78,555 shares of [7550] United Distillers, Ltd. stock, is that correct? A. Yes.

Q. That was from the proceeds of the sale? A. Yes, sir.

Q. And approximately $3 million or, to be more exact, $2,737,108 was used to buy certificates of indebtedness, is that correct? A. Yes.

Q. So by the end of 1947, Mr. Klein, you had United States certificates of indebtedness of over $2 million, is that right? A. Yes.

Q. And in the year 1948 you still had $2 million of U. S. certificates of indebtedness, is that correct? A. I am sure you are right.

Q. And you had those $2 million in U. S. certificates of indebtedness when your income tax return stating that all your funds had been attached by the Collector and therefore you could not pay the $8000 was filed, is that correct? A. What is that? I didn't hear that.

Q. I will reword the question for you.

You had the $2 million in certificates of indebtedness when this return, Government's Exhibit 356, [7551] was filed, which stated that the Collector had levied on all of the taxpayer's funds? A. Yes, sir.

Q. When for the first time did you meet Irving Koerner? A. I would say sometime in 1941 or 1942; I am not exactly sure.

Q. Tell me, please, the circumstances under which you first met him. A. I believe I first met him in connection with the sale of Jesse Moore Blended Whiskey that was bottled by United Distillers of America, Ltd.

Q. When did you first start to talk with him in connection with the Harwood situation? A. I think the first time he spoke to me would be in the latter part of 1943.

Q. The latter part of 1943? A. 1943.

Q. How did that come about? What were the circumstances of your meeting with Mr. Koerner on the Harwood situation? A. Only his desire to obtain more merchandise, that's all.

Q. Did you have a conversation with Albert Roer [7552] before you discussed that with Koerner? A. I don't have any recollection of that.

Q. Did you and Mr. I. J. Klein and Mr. McLennan meet with Mr. Roer in a hotel room in Winnipeg before you met with Mr. Koerner to discuss the possibility of Mr. Roer's obtaining an American distributor for Harwood Whiskey? A. No, sir, I don't believe so.

Q. Did you at any time ask Mr. Roer to obtain an American distributor for you? A. Oh, yes.

Q. That was of course before the arrangement was made with R. C. Williams, is that right? A. Oh, yes.

Q. Was Mr. Roer the one who introduced you to Mr. Koerner? A. No, I don't believe that is correct.

Q. Mr. Roer did make an effort, did he not, to find an American distributor for Harwood? A. A very strong effort.

Q. At your request? A. True.

Q. Thereafter, you met Irving Koerner, is that correct? A. I don't know whether I met him before or [7553] prior to that time.

Q. I don't want to confuse you. I am talking now in connection with the Harwood situation, not any previous meetings you may have had in connection with the Jesse Moore situation.

The Witness: Would you mind reading that question.

(Question read.)

A. I believe I met him.

Q. Tell me, please, when was it you first started to discuss with Irving Koerner the Harwood situation. A. I don't exactly recall that, Mr. Bauman.

Q. What is your best recollection, Mr. Klein? A. I don't have one.

Q. Tell me what year it was. A. My best recollection would be the year 1944.

Q. Can you tell me, please, when during the year 1944 it was that you first met with Mr. Koerner? A. Sometime prior, it might have been a month, two months or three months prior to the final consummation of the contract with his company.

Q. Is it your best recollection that it was [7554] sometime during the first month of 1944?' A. I wouldn't like to make a positive statement.

Q. On April 18th or thereabouts, Mr. Klein, you entered into a contract with R. C. Williams & Co. for the sale of Harwood Whiskey, is that correct? A. Yes, sir.

Q. That, to you, was a very important contract, isn't that right? A. Well, it developed into a very important contract.

Q. At the time you signed it—withdrawn. You did not sign it.

At the time that contract was signed by R. C. Williams, there was as part of that deal an order for 100,000 cases of whiskey, which at $19.05 a case, is approximately $2 million worth of business; isn't that right? A. That's correct. But——

Q. Just a moment. So that it was a matter of considerable importance to you when you came to that agreement

with R. C. Williams, is that correct? A. No, that is not exactly correct.

Q. Two million dollars as a preliminary order [7555] was not that important to you, is that right? A. The amount is very important, but the preliminary order was not so important.

Q. Let us examine that a little further, Mr. Klein, just one moment.

Of that $2 million—and when I say $2 million I am using a round figure—— A. A round figure, yes.

Q. Agencias Destiladores would have paid $805,000 for that whiskey, is that right? A. That's correct.

Q. And Agencias Destiladores would have collected approximately $1.9 million or $2 million, is that right? A. that's correct.

Q. So that in that one order, in that one sale, you had made over—by you I am talking about Agencias—you had made over $1 million, isn't that right? A. That is not correct, sir, if the order had not—if they had not accepted the entire shipment, no, sir, that is not correct.

Q. However, they had contracted to accept 100,000 cases, had they not? A. With the oral understanding if they could not [7556] sell it, the order would be canceled.

Q. That was not in the contract? A. That was not in the contract.

Q. However, you had in writing a commitment from R. C. Williams & Co. to buy $2 million worth of Harwood Whiskey? A. That's correct.

Q. Upon which there would have resulted a profit of $1 million, is that right? A. If they had accepted it.

Q. If they bought the whiskey? A. That's correct.

Q. So that that was in itself a very important piece of business, wasn't it? A. Only to the extent that I have told you, sir.

Q. If they didn't buy the whiskey, it might have been nothing? A. No. If they couldn't sell it, it would have been nothing.

Q. However, if they did sell it, of course, it meant $1 million, right? A. Correct.

Q. I want to know how long before you entered [7557] into that arrangement with R. C. Williams on April 18, 1944 it was that you started to talk to Irving Koerner. A. Sir, I have already said I don't recall. It might have been in January, it might have been in February, it might have been in December. I don't recall.

Q. I want to find your best recollection, sir. A. My best recollection will have to be a period from December to March.

Q. You cannot tell us any more closely than a four-month period—— A. No, I cannot.

Q. —when it was that you started to talk with Irving Koerner, is that right? A. No.

Q. Have you talked with anybody else from R. C. Williams? A. No, I don't believe I have.

Q. Koerner was the only one you spoke to in that connection? A. Yes.

Q. Until you met Mr. Jacobs and later Mr. Jaburg? [7558] A. I believe I met Mr. Jaburg first.

Q. But until the time you met Mr. Jaburg, Irving Koerner was the one with whom you were discussing the details of the Harwood deal, is that right? A. Only at one meeting, I believe.

Q. You had one meeting with Irving Koerner? A. I believe so.

Q. Was that at the Dodge Hotel in Washington? A. I think it was.

Q. Who was present at that meeting at the Dodge Hotel in Washington? A. I believe Mr. Roer.

Q. Mr. Roer, Mr. Alprin? A. I don't recall whether Mr. Alprin was there or not.

Q. Would you think for a moment to see whether you can remember whether Mr. Alprin was there or not? A. If you are asking for my best recollection, sir, I would say no.

Q. And Mr. Roer was there and you were there and Mr. Koerner was there, is that right? A. That's correct.

Q. It was at that meeting that you had your [7559] first conversation with anybody from R. C. Williams about the Harwood Whiskey deal, is that right? A. No, that meeting, I believe, at the Dodge Hotel, which was a luncheon, incidentally, not particularly a meeting as such, I had come over to Washington from Baltimore because Koerner was then acting, I believe, as a consultant of some kind.

Q. He was an OPA consultant, is that right? A. Yes.

Q. Yes. Go ahead. A. He was, as all jobbers were, asking for additional supplies of Jesse Moore. We were unable to supply it. He was getting a quota at that time because we only had a limited amount of it, and I don't recall whether Harwood came up at that meeting or not, sir.

Q. I am asking you only about the meeting at which Harwood came up. I suggest that the meeting or luncheon at the Dodge Hotel in Washington about which you have

told us was the meeting at which your conversations with Koerner originated, is that correct? A. Did they originate at the Dodge Hotel?

Q. I am asking you that, in connection with the Harwood Whiskey situation. [7500] A. I don't recall that, sir.

Q. You said a moment ago, did you not, that your best recollection was that you had one conference with Mr. Koerner on the subject of Harwood Whiskey, is that right? A. I think that's correct.

Q. Tell me, please, what was said at that conference. A. I don't have any recollection.

Q. What is your best recollection? A. I don't have one.

Q. You cannot remember anything of what was said on that day? A. Other than the fact—no, really, it would be guesswork on my part, purely conjecture.

Q. Thereafter you saw Mr. Jaburg, is that correct? A. Sometime prior to the execution of the contract, sir; the exact time I wouldn't be able to tell you.

Q. Did you have a conversation with Mr. Jaburg about the Harwood deal? A. Oh, yes.

Q. How long before the signing of the Harwood agreement did you have that conversation with Mr. [7501] Jaburg? A. I can't pin it down to an exact period.

Q. What is your best recollection, Mr. Klein? A. It might be four or six weeks before.

Q. The next time you saw Mr. Jaburg was when you were all present a a meeting with relation to the signing of the Harwood contract, is that right? A. No. I think the next time I saw Mr. Jaburg was when Mr. Alprin and Mr. Jacobs were discussing a contract.

Q. When was that? How long before it was signed? A. It might have been a period of two or three weeks.

Q. You have said—and correct me if I am wrong—that you met Mr. Jaburg once some time around—it might have been six weeks before the agreement was signed, and then again you met him with Mr. Jacobs, it might have been three or four weeks before the agreement was signed. A. I met him with Mr. Koerner.

Q. Sir? A. With Mr. Koerner.

Q. You met Mr. Jaburg with Mr. Koerner? [7562] A. Yes, and I think Mr. Roer was present at that time.

Q. Was Mr. Jacobs present at that time? A. I don't believe so.

Q. Did you see Mr. Jaburg after that? A. I don't recall. I think yes, after the contract, I believe, was finally consummated.

Q. I am talking about before the contract was consummated. A. No, I have no recollection.

Q. Do I understand, then, that in the one meeting with Koerner and in the two meetings with Jaburg, the entire Harwood deal was agreed upon by you and them? A. That's right.

[7563] Q. I would like to talk with you about this second meeting, and I would like to ask you to tell me, please, what happened on the occasion of that second meeting? A. What second meeting have you reference to?

Q. You told us about two meetings at which Mr. Jaburg was present, is that correct? A. Yes.

Q. Tell me what happened on the second occasion of those two meetings? A. I believe the second meeting resulted in his asking me what happened if they couldn't take

the delivery of 100,000 cases, and my telling him not to be concerned about it, if he couldn't take it, it wasn't our purpose to try to force anyone to take anything they couldn't take. That had been our policy during our entire business career in this industry, and it would continue to be that policy.

Q. What did he say? A. He was very appreciative.

Q. Was there a draft of the agreement present on the occasion at which you had this discussion? A. No, because I think I remember—I think that I had told him in my first meeting that the only [7564] way the contract would be consummated would be by an official order of 100 cases.

Q. But the negotiations had proceeded, had they not, to the point where various drafts of the contract had been drawn by that time, is that correct? A. I don't think it is.

Q. You don't think it is correct? A. It isn't correct.

Q. At the time of this agreement there was no agreement? A. I don't think so, I wouldn't swear.

Q. Were you present at any time, either with Mr. Jacobs or Mr. Jaburg, at any meeting where a draft of the agreement was actually there and shown to you? A. I don't have any such recollection.

Q. Did you see the agreement before it was signed in Havana? A. I saw it, oh, yes.

Q. When did you see it? A. I believe I saw it when it was sent to me in Baltimore.

Q. When was that? [7565] A. Some time prior to its signing.

Q. By R. C. Williams? A. Yes.

Q. Before R. C. Williams, you saw it, is that correct? A. Yes.

Q. Who sent it to you? A. I believe Mr. Alprin.

Q. Was it in one part or was it in two parts? A. That I don't recall, sir.

Q. Do you have any recollection of having seen the agreement or a draft of it in one part? A. I may have, Mr. Bauman, I don't recall.

Q. I know you may have, but what is your recollection? I really don't have one.

Q. You don't remember that? A. No, I do not.

Q. Did you see that agreement, Mr. Klein, in its final form, before R. C. Williams signed it? A. I am pretty sure I did.

Q. So then it would have had to have been in two parts, Government's Exhibits 4 and 5, is that right? A. You may be perfectly right, Mr. Bauman.

Q. I know I may, but I am asking what your |7506| recollection is? A. Unfortunately that is a good many years ago.

Q. I. A. It is a long time.

Q. I show you Government's Exhibits 4 and 5, Mr. Klein, and ask you to look at those (handing to witness). You have seen the originals of those before, have you not? A. I am almost sure I have.

Q. You must have seen them? A. I am almost sure I did.

Q. It isn't your position that anybody would enter into these agreements without your knowledge and approval? A. Not at all.

Q. So when you saw them they were in two parts, such as Government's Exhibits 4 and 5 are now, were they not? A. I would say they were.

Q. Did you have any discussion with anybody about that? A. In what regard?

Q. Did you ask Ellis Rosenberg why these agreements are in two parts? A. No.

[7567] Q. Did you ask Morris Alprin why are these agreements in two parts? A. No, I don't believe so.

Q. It was one agreement and one transaction in the overall approach, was it not, Mr. Klein? A. Mr. Bauman, you are asking me to explain why a lawyer would make two parts of an agreement, and I am not——

Q. I am not asking you that at all. I am asking you did you ask any of your lawyers, Ellis Rosenberg, Morris Alprin or any other lawyer you had why that agreement was in two parts before it was finally signed? A. I don't believe I did.

Q. You read it carefully, I assume? A. I read it, yes.

Q. I show you Government's Exhibit 21, which you will recognize as that letter you sent to Harold Ostrow, which contained a copy of an opinion from a lawyer by the name of Halperin. I believe you stated yesterday you remembered reading that letter before you sent it out to Mr. Ostrow? A. Yes.

Q. I believe you said yesterday that had nothing [7568] to do about the transaction about which we are talking here? A. Nothing.

Q. Nothing to do with the Harwood deal, is that right, Mr. Klein? A. Nothing.

Q. It was dated, was it not, this letter from Mr. Halperin, March 3, 1944? A. I believe that is the date.

Q. That was precisely the time you were talking to Irving Koerner about the possibility of Harwood whiskey being sold to R. C. Williams, is that right?

A. That is correct in that regard, but may I say, Mr. Bauman——

Q. Just a moment, your lawyer will permit you to say whatever you like.

While you were talking about the Harwood deal, you read an opinion in evidence here which refers to a combination of Canadian and American individuals to combine for the purpose of selling Canadian whiskey through Cuban corporations, is that right? A. Nowhere in relation to the Harwood transaction does that letter refer to, Mr. Bauman, and that letter refers to the American citizens and one [7569] Canadian citizen, and has no bearing whatsoever on the Harwood transaction.

Q. The letter refers, does it not, to A, B and C, all American citizens? A. That's correct.

Q. And D, a resident alien of the United States? A. That's correct.

Q. That was your brother at that time? A. Not at all. I don't know who he got the opinion for.

Q. Was your brother a resident alien at the time he got this opinion? He was living in the State of Washington, was he not? A. Not to my knowledge.

Q. Wasn't he living in Bellingham? A. Not to my knowledge.

Q. Did he ever live in Bellingham? A. He maintained an apartment there for his wife, but he didn't live there.

Q. Was he not during this period a resident alien? A. I don't know.

Q. The letter goes on to talk about the American group "Has been in contact with individuals [7570] E and F, both Canadian citizens and residents, hereinafter referred to as the Canadian group."

Now, E and F were McLennan and Norgan, were they not? A. My dear sir, you are going on assumption, not on fact.

Q. I am asking. A. I don't know, sir, I don't think it does.

Q. This letter was sent to you for some purpose, was it not? A. It wasn't sent to me at all.

Q. Were you the one who forwarded it to Ostrow after your brother gave it to you in New York City? A. Yes, he did, and he handed it to me in New York City and requested that I send it on to Ostrow, which I did.

Q. You didn't know what it referred to, is that your point, Mr. Klein? A. Mr. Bauman, that is my point.

Q. You didn't know what this meant? A. Not at all.

Q. It had nothing to do with the Harwood whiskey deal? A. Certainly nothing whatever.

[7571] Q. Although it refers to two Canadians who are in a position to obtain a contract from a Canadian distillery, whereby the latter will agree to sell to the Canadian group or its nominee within a certain period of time a certain number of cases of liquor, is that correct? A. But there are other distilleries in Canada and other groups in Canada. We were not the only people in business in Canada, surely.

Q. I understand that, but your brother was only in one distillery at that time, was he not? A. My brother, yes, sir.

Q. And you only had an affiliation through UDAL with one distillery at that time, isn't that right? A. That is correct.

Q. As a matter of fact, when you sent that out to Mr. Ostrow, you wrote the following:

> "Dear Harry: Enclosed you will find a copy of a letter written to R. J. by attorney J. Stanley Halperin while he was in New York, which you will find interesting and self-explanatory."

Do you mean to say that you did not understand what this letter was about when you wrote to [7572] Mr. Ostrow that the letter was interesting and self-explanatory? A. What I should have added——

Q. I am asking you a question, please.

The Witness: Will you read the question?

(Question read.)

A. I don't mean to say I didn't understand the language of the letter. But what it was about, I did not.

Q. It was interesting, was it not, because it referred to a deal which you and your brother and the others who are referred to in there as A, B, C, D, E and F were going to participate in? A. That is purely an assumption on your part.

Q. Is it the fact, Mr. Klein? A. No, it is not the fact; no.

Q. This was during the time that you were talking to Irving Koerner, isn't that right? A. Yes, but still not the fact.

Q. Had nothing to do with the Harwood transaction at all? A. Not a bit.

Q. It just concerned six mythical people, A, B, C, D, E and F, is that right? [7573] A. But it also referred to some transactions not involved in Harwood.

Q. But it also involved some transactions that could very well relate to Harwood, is that right? A. You can get opinions on most anything that will relate to one subject or another, sir.

Q. I am aware of that. I am asking you, Mr. Klein, if at the time you were talking to Irving Koerner and you sent this thing to Harold Ostrow within a matter of six weeks before the final signing of the Harwood agreement you did not know that that letter, which you took from your brother, the head of UDL, referred to the very Harwood transaction about which you were talking to Mr. Koerner at the time? A. Mr. Bauman, may I say that you are going on assumption that there is——

Q. I asked you a question, don't worry about my assumptions. Just answer my question.

The Court: He has every right to worry about your assumptions. That is an entirely gratuitous remark and the jury is instructed to disregard it. It is attributable to zeal, a very commendable zeal. What was your answer going to be, Mr. Klein?

A. He was assuming I had that letter in mind when I talked to Harwood. I had no more that letter in mind when I talked to Harwood than I have of jumping over this railing. The letter had no bearing whatsoever on the Harwood transaction, it relates to something different.

You are assuming that all those initials mean George Norgan, A. L. McLennan, I. J. Klein, H. H. Klein, and they do not.

Q. Whom do they mean? A. I don't know, sir.

Q. Why did you send this letter? A. At Mr. I. J. Klein's request.

Q. He just asked you to send it to him? A. He was in New York. I was returning to Baltimore. He knows I have an office. He does not have an office. He said to me, "If you are going to Baltimore, do me a favor and send a copy of this on to Ostrow."

Q. Within six weeks after that you had another opinion from Mr. Haas, is that right? A. That opinion was obtained in relation to the Harwood contract.

Q. That is dated within approximately six weeks [7575] of the Halperin letter, is that right? A. I will have to see the date.

The Court: March 3 and April 17 are the dates.

A. It is approximately six weeks, I will agree to that.

Q. When did you first start to talk to Mr. Alprin about the Harwood deal? A. The first time I met Mr. Jaburg.

Q. Not until then? A. I don't believe so.

Q. That to the best of your recollection would be in the area of about six weeks before the signing of the contract, is that right? A. Within there.

Q. Somewhere around March 3rd or thereabouts, is that correct? A. That would be an assumption.

Q. I am not attempting to pin you down to the day. A. I wouldn't like to be pinned down.

Q. It was at about that time and in early March that you first contacted Mr. Alprin in this connection, is that right? [7576] A. It might have been in February.

Q. It might have been late February or early March? A. I wouldn't want to be pinned down to an exact date.

Q. Did you discuss with Mr. Alprin what you had in mind, what you were working on, negotiating with Mr. Koerner about? A. Negotiating for a contract for Distillers Agency.

Q. Did you tell him that you were going to cause to be formed certain Cuban corporations in connection with this transaction? A. The Distillers Agency was already formed.

Q. Did you tell him that the deal was going to take place between Distillers Agency and R. C. Williams? A. Oh, yes.

Q. Did you tell him that you had formed other corporations in Cuba? A. I don't believe so, no.

Q. Had you discussed with him the proposal that a large number of Cuban corporations be formed in connection with the Harwood deal? [7577] A. Wait a minute, Mr. Bauman, there wasn't any other rporation formed in connection with the Harwood deal, only one, that was the Distillers Agency at that time, and I believe that was formed in the latter part of January, 1944.

Q. Did you discuss with him your plan of doing business through this Cuban corporation? A. Not a plan, just discussed that we were trying to enter into a contract between R. C. Williams and Distillers Agency, and would he act in the capacity of the attorney for Distillers Agency.

Q. You retained him as an attorney for the Distillers Agency, is that right? A. Yes.

Q. It pretty soon became clear to you, after you had spoken to Mr. Alprin, that R. C. Williams was ready to enter into an agreement which in writing guaranteed that they would buy 100,000 cases, is that correct? A. Mr. Bauman, I can only repeat that their writing didn't mean anything, it was purely on the basis if they were able to sell it they would take it. If they weren't able to take it,——

Q. You didn't answer my question.

[7577-A] (Question read.)

A. I tried to answer it.

[7578] Q. Let me ask it again, Mr. Klein.

Within a short time after you discussed your plans with Mr. Alprin it was clear to you that R. C. Williams was going to enter into a written contract which obligated them to buy 100,000 cases of Harwood Whiskey; is that right? A. Subject to the comments that I made previously.

Q. And if they bought that 100,000 cases of whiskey as per their contract, that you and your associates and your corporation—that your corporation would make $1 million, is that right, on that one deal? A. If they were successful, yes.

Q. If they bought that whiskey that they contracted to buy. And of course you know, Mr. Klein, that at that time that that might involve very, very serious tax consequences in the amount of money that might have to be paid on such a profit, would it not? A. Well, I think any man who is in business is conscious of taxes.

Q. And you were conscious of it at that time, weren't you? [7579] A. Like every other person is.

Q. But you were conscious of it at that time, were you not? A. Well, Mr. Bauman, I say I am, as very person is.

Q. Yes. When did you first discuss with Mr. Alprin the question of taxes? A. I don't believe that—I can't give you the exact time, sir, but it must be sometime prior to this letter of Mr. Haas's, of his firm, which is dated April 17th.

Q. What is your best recollection, sir, as to when you first started to discuss income taxes with Morris Alprin? A. I don't know whether I talked to him about—I should say I don't recall whether I spoke with him about taxes or whether he brought the subject up and said we'd better get a tax opinion.

Q. You don't remember whether he said it or you said it? A. That's correct, sir.

Q. But it definitely was said; no question about that? A. Oh, I wouldn't dispute that.

[7580] Q. And when approximately was it said? A. It would have been sometime prior to this here.

Q. What is your best recollection? A. Well, I would be guessing, Mr. Bauman.

Q. I don't want you to guess; I just want you to tell me your best recollection. A. Well, I don't have one, and if you would permit me to guess, I would say——

Q. No, no, thank you. I am not asking you to guess, Mr. Klein.

Tell me, please, to the best of your recollection, your conversation with Alprin about the obtaining of a tax opinion. A. I don't recall whether that was a personal discussion, whether it was personal or whether it was over the telephone from Baltimore. I don't recall.

Q. What was the conversation regardless of whether it was in person or over the telephone? A. I don't recall, sir, because I have nothing to refresh my memory with.

Q. I would like you to tell me, please, the circumstances under which Government's Exhibit 8 was obtained. [7581] A. Would you mind my reading the first page of this letter.

Q. Please do. A. Thank you.

The Witness: Now would you repeat that question, please.

(Question read.)

A. I don't recall exact details, sir, but all I could say is that since this letter is dated April 17th and the contract is dated the 18th of April 1944, the letter, April 17, 1944, I am assuming that I must have talked to Mr. Alprin before that or he to me, and being a lawyer I assume that he would, if I didn't ask him, and I must assume I did, sir——

Q. Now look, Mr. Klein. I am going to ask you not to assume anything. I am going to ask you whether you remember or not any conversation about obtaining a tax opinion. A. No, I wouldn't want to swear that I recall any such conversation.

Q. Mr. Burke had been preparing your personal returns and those of certain of your business interests in Baltimore for a considerable period of time, as you testified yesterday, had he not? [7582] A. Since 1934.

Q. Since 1934? A. That's correct.

Q. And at this particular time you did not submit this contract to Mr. Burke who was right there in Baltimore with you, did you? A. No, sir, I did not.

Q. It was submitted to Mr. Haas? A. Whom I did not know, sir.

Q. And whom you had never heard of before Mr. Alprin mentioned him to you, is that correct? A. That's correct, sir.

Q. And so on Mr. Alprin's say-so, you did not use your own tax consultant of fourteen years in obtaining an opinion under this very important contract, Government's Exhibit 5; is that right? A. I don't think that has any bearing on it, Mr. Bauman.

Q. Will you answer me, please. A. No, I didn't.

Q. Did you ever make any comparison, Mr. Klein, of the opinion of Mr. Halperin, Government's Exhibit 21, with the opinion of Mr. Haas? A. At no time, sir.

[7583] Q. Never? A. Never.

Q. And thereafter, about a year later, on February 27, 1945, you caused to be obtained Government's 358, is that correct, the second of the Haas opinions? A. Yes, sir.

Q. And you say that you were approaching the tax period, is that correct? A. Well, as usual, the normal personal and corporate taxes for the preceding year are due on the 15th day of March of the year following.

Q. Were there any books of Agencias at that time? A. Yes, the memorandum books, the memo sheets which you have seen here.

Q. In Baltimore? A. In Baltimore, and an original set of books.

Q. Were those books audited by any accounting firm? A. Where?

Q. Wherever they were. A. In Cuba, probably.

Q. Do you know that? [7584] A. Of my own knowledge?

Q. Yes. A. No.

Q. Were they audited in Baltimore? A. No, sir.

Q. Had any accountant been consulted up until February 27th? A. No, sir.

Q. About whether it would be necessary to file a return? A. Not up to the time of the giving of this opinion.

The Court: I don't like to interrupt, but let the record show that the witness was mistaken when he said the memo records of Agencias "which you have seen here." We haven't any such records in evidence, if you are referring to the records Mr. Rokoff testified to.

The Witness: I am sorry.

The Court: Agencias was not in business currently in 1947, he testified, and therefore he didn't bring them up to Canada and we never had them here.

The Witness: I am sorry, sir. I thought [7585] they were here.

The Court: I am sorry I interrupted you, but I didn't want it to get too far back.

Mr. Bauman: It is quite all right.

Q. Well, tell me, please, who it was that requested that second opinion from Mr. Haas. A. I must have asked Mr. Alprin to obtain it.

Q. Do you remember asking Mr. Alprin? A. No, I don't, but I am presuming that I did.

Q. I am trying to ask you only what you remember and not what you presume or assume.

Do you understand that, Mr. Klein? A. Yes.

Q. Tell me do you remember asking Mr. Alprin to

obtain from Mr. Haas that second opinion? A. I would have to say yes.

Q. You do remember? A. (The witness nods.)

Q. And can you tell me, please, when it was and where it was, and what was said on the occasion that you asked Mr. Alprin to obtain that second opinion? A. I believe I asked him to do it on the telephone.

Q. You called him from Baltimore? [7586] A. That's right, sir.

Q. What did you say to him and what did he say to you? A. I don't recall what I said to him in detail but I told him that we were coming to the end of the taxable year and notwithstanding the first opinion of Mr. Haas, that I wanted to be amply protected that the corporation was not doing business in the United States and that if it was doing business in the United States that it pay its corporate income taxes, and that be the basis of his getting another opinion from Mr. Haas in connection with it.

Q. Then Government's Exhibit 358, that second opinion of Mr. Haas, came to your attention, did it not? A. Oh, yes.

Q. Mr. Alprin obtained it and sent it to you? A. Yes.

Q. And did you read the last paragraph, Mr. Klein? A. If you will allow me to read it.

Q. I say did you read it at that time? A. I believe I did. I am sure I did.

Q. Do you remember it stated as follows: "Let [7587] me state further as a practical matter, that if instead of just performing the functions that are described above, your president is in fact doing business here such as supervising the carrying out of your agreement with Williams,

supervising the shipment of merchandise from Harwood to Williams and caring for the multitude of details which must be involved in these transactions, then you are doing business here and subject to tax here," referring to the corporation. A. Now what does the preceding paragraph say?

Q. You may read it.

The Witness: May I take the time to read this, sir?

The Court: Yes.

A. I think that the last paragraph, sir, was gratuitous.

Mr. Kiendl: Was what?

Mr. Bauman: I didn't hear.

The Reporter: Gratuitous.

Q. Did you read it, though, gratuitous or not, Mr. Klein? A. Yes, I read it.

Q. Did you read it when you got it back in [7588] 1945? A. Undoubtedly.

Q. And you regarded it as gratuitous then, did you not? A. I sure did.

Q. And so you went to Mr. Burke and on March 6, 1945, within a period of about—— A. Oh, ten days, eight days.

Q. —of eight days and obtained another opinion from Mr. Burke; is that correct? A. That's right.

Q. And that one didn't have any gratuitous opinions in it, is that right? A. No, no. The opinion, insofar as the body of each of the opinions are identically the same, but the part I say is gratuitous is this here caution, the last paragraph. He gives the opinion up to the first paragraph of the third page, which coincides entirely with the opinion

of Mr. Burke, but then he goes on to say, "Let me caution you for the second time * * *" You have read the paragraph into the record. It had no bearing on anything which I was doing.

Q. Yes, and the opinion which you later got [7589] within a period of eight or ten days, in that opinion Mr. Burke did not have any such gratuitous statements, is that right? A. No, it did not, sir.

Q. When you obtained that opinion from Mr. Burke you showed him the agreement, is that right? A. Yes, sir.

Q. You showed him Government's Exhibit 4. That is the main agreement of April 18th. A. It is my opinion, sir, that I showed him both 4 and 5.

Q. Is that your recollection? A. That is my opinion.

Q. I didn't ask for your opinion; I am trying to get your best recollection. A. My best recollection will have to be that I showed him both.

Q. That you showed him both? A. That's correct, notwithstanding the fact that I heard Mr. Burke here in this courtroom state that he did not think that he saw both of them.

Q. And notwithstanding the fact that that opinion of Mr. Burke's makes reference to not one provision of the agreement of April 20th, is that [7590] right? A. Well, sir, it is only to this point: that some men refer to this to be one contract. I have heard this referred to as a supplemental letter. To me this is a contract. One binds the other, and the other binds this one. I am sorry, but that is my interpretation of it.

Q. I am really not going into it. I am not going into your interpretation of the contract, whether it was one or two. I am asking you whether it is your best recollection

that you showed both of those things to Mr. Burke, notwithstanding his testimony and the fact that there is no reference made to any one of the paragraphs in the agreement of April 20th. A. Will you please show me the letters, the letter from Mr. Haas and the letter from Mr. Burke, again? Would you mind?

Q. I think you have the letters. A. No, you just now took them away.

(Papers handed to the witness.)

A. Now, sir, in the opinion from Mr. Haas, who obviously knew about the supplemental letter, and Mr.—oh, I have Mr. Burke's——

[7591] Q. Are you aware, Mr. Klein, of the question which I just asked you?

The Witness: Would you repeat it, please.

(Question read.)

A. My response is that notwithstanding, there is no reference made to it here. I see no reference made to it in the Haas opinion, either. Now I haven't read them carefully, but that is my first blush—on first blush it so appears to me.

Q. That doesn't refresh your recollection that you in fact did not show the supplemental agreement to Mr. Burke? A. Mr. Bauman, I won't argue with you that I did or I didn't.

Q. Now thereafter, after the entry of R. C. Williams & Co. and Agencias into this agreement, this deal took form and shape and started to do business, is that correct? A. After a great deal of stumbles, yes.

Q. Well, certainly not more than six months of stumbling, Mr. Klein, is that correct? A. Six months of stumbling is a long time in this business.

Q. After whatever preliminary stumbling period [7592] there was, the arrangement went forward and you did what you said was a tremendous job in Harwood, is that correct? A. Fantastic. Beyond our wildest dreams.

Q. Fantastic. Did you conduct that operation yourself, Mr. Klein? A. When you say conduct, what do you mean?

Q. You ran it, didn't you? A. I don't know what you mean. How do you express "ran"? The president of a company doesn't run everything; he has——

Q. You were the operating head of it, weren't you? A. I was the executive head. Put it that way.

Q. And you worked very closely with Mr. Koerner in this connection, did you not? A. No, I wouldn't say very closely.

Q. Did you see Mr. Koerner at all? A. Oh, yes.

Q. How often did you see Mr. Koerner? A. Oh, I spoke to him probably once a week on the telephone.

Q. How often did he come down to Baltimore? A. I doubt if he was in Baltimore more than a [7593] half dozen times, maybe a dozen times during the period.

Q. During the entire period of the Harwood deal? A. That's right.

Q. And how about your appearances in New York? How frequent were they? A. Once every week or every two weeks, something like that.

Q. And you spoke very often with Mr. Koerner about allocations on the telephone, or problems, or a hundred and

one things that came up in connection with the Harwood operation; is that right? A. Not a hundred and one things. I think his prime cry was for more merchandise.

Q. And also in connection with complaints about the allocations? A. His complaints about allocations were simply that he was always shoving somebody on the telephone to me about allocations, blaming—trying to shove the responsibility so he wouldn't take the brunt of—not that I blame him for it. I probably would have done the same thing in his situation.

Q. Well, you controlled the allocations, didn't [7594] you? A. No, I did not, sir.

Q. Koerner had no jurisdiction to control allocations, did he? A. Neither did I, sir. The control lay in the Duncan Harwood Company.

Q. You were the one who sent the allocations to him from Baltimore, is that right? A. I sent the allocations to him in Baltimore—from Baltimore, rather, based on the allocations I had received from Canada.

Q. You would get an overall allocation, then you would break it down into more specific allocations, isn't that right? A. No, no. That was not the practice of the Canadian distillers. The Canadian distillers generally allocated the jobber to receive the merchandise and even went so far as allocating the wholesaler—allocating to the retailer. In our operation it was purely that the distiller allocated the number of cases to the respective purchaser when allocations were made. You must remember, Mr. Bauman, that allocations were not made in the early part of—were not made in 1944 at all. As a matter of fact, I don't think they were made until [7595] sometime in 1945.

Q. I show you Government's Exhibit 16-A to -D and ask you if you have ever seen those before. A. No, I haven't seen them.

Q. They were typed in your office in Baltimore, weren't they? A. Yes, sir.

Q. And they were prepared pursuant to your directions in Baltimore, weren't they? A. They were copied off of sheets.

Q. And they were sent out pursuant to your direction from Baltimore, weren't they? A. Yes, they were copied from sheets we received, yes.

Q. And your testimony is that you were merely sort of a tube from which the allocations came from Canada to R. C. Williams, is that right? A. No. I wouldn't say that.

Q. Well, you got them on sheets, you had them retyped and you sent them on to R. C. Williams, is that your testimony, sir? A. No. The allocations came down and we were permitted to make minor changes as was R. C. Williams permitted to make minor changes.

[7596] Q. After talking with you, is that correct? A. No, after my talking with the distillery as to there being heavy in giving one jobber more merchandise than he was entitled to.

Q. But under the contract they had to talk to you. By "you" I am talking about Agencias—before they could make any changes in allocations, didn't they? A. I don't think so, Mr. Bauman.

Q. Didn't they have to get the permission of Agencias before they could make any allocations of whiskey? A. No, I don't think so. I believe you will find that the con-

tract applies only to the appointment of jobbers; nothing to do with allocations. I don't recall that provision at all.

Q. Well, you made what you call minor changes in the overall allocations that you got from the distillery, is that right? A. That's correct.

Q. And what else did you do, Mr. Klein, in connection with the operation of the Harwood situation? A. Well, I think it is quite clear we made up invoices in Baltimore subsequently, collected money, [7597] made deposits and issued checks.

Q. And as you went along with the Harwood deal, Mr. Klein, you formed, did you not, or caused to be formed, a great many Panamanian and Cuban corporations? A. As time went on, yes.

Q. About how many would you say were so formed? A. Probably fourteen, of which about twelve were used.

Q. Sir? A. I say about fourteen, of which about twelve were used.

Q. I have heard the figure 17 in this case. Does that sound about right to you? A. That may be right, sir, but I don't recall that many.

Q. Let us return to the agreement, Government's Exhibit 5, for a moment, and let me call your attention to paragraph 2 of the supplementary agreement dated April 20th.

> "The agent will make no sales to wholesalers in monopoly states"——

I think we can agree that what was meant by "everybody" was "all" because there are no wholesalers [7598] in monopoly states. A. That's right.

Q. Is that right? A. That's right.

Q. —". . . without first having received written approval of the supplier." A. Yes.

Q. The supplier—that was Agencias, wasn't it? A. Yes.

Q. "The supplier shall have the refusal of the customer or the quantity sold by the agent to any wholesaler or monopoly state." A. That's right.

Q. Well, then what I said before, namely, without the approval of Agencias, no whiskey could be sold to anybody, was correct; isn't that right? A. Not in the term that you mean it, sir.

Q. Well, isn't that what the contract says, Mr. Klein? A. Yes, it is, but we were trying to effect something entirely different from what is in your mind when you ask that question.

Q. And while we are talking about what the contract says, in connection with the 100,000-case [7599] order, let me refer to paragraph 17:

> "This agreement constitutes the entire understanding between the parties hereto and no amendments or changes thereof shall be valid and binding unless the same is in writing, signed by both of the parties hereto."

A. Yes.

Q. And is it your testimony that when you told R. C. Williams that they didn't have to take this 100,000 cases if they didn't want to, that this seventeenth paragraph of the agreement, Government's Exhibit 4, didn't mean anything? A. Sir; every agreement is as good as the person who makes it, and if two men do not agree—at least as

far as my experience—if they can't sell something, the seller would be doing him a grave injustice to force him to take something that he can't sell. That is a formality——

Q. Excuse me, Mr. Klein. I wonder if I could have you respond a little more directly to my question.

Mr. Bauman: Would you read it to Mr. Klein, please.

(Question read.)

A. It meant what it said only to a point, sir.

[7599a] Q. Coming back to that second Haas opinion——

The Court: Supposing we leave that until 2.15.

Mr. Bauman: All right, sir.

(Recess until 2.15 p. m.)

[7600] AFTERNOON SESSION—2.15 p. m.

(Jury Present.)

HYMAN HARVEY KLEIN resumed.

Cross Examination Continued by Mr. Bauman:

Q. Mr. Klein, do you remember being asked these questions yesterday and did you make these answers, page 7404 of the record:

"Q. From 1934 on you were in business in Baltimore until this situation arose? A. Yes.

"Q. Are you in this business now? A. In name only.

"Q. And how long has that condition existed? A. Ever since my jeopardy assessment of March 3, 1948."

A. Yes, sir.

Q. You are in business then in name only, is that correct? A. So far as the H. Harvey Company is concerned, yes, sir.

Q. And that has been the case ever since 1948 when the jeopardy assessments were placed, is that right? [7601] A. Only for one period, I believe, when we represented Harwood for a short time after we had trouble with the subsequent distributor, Renfield & Company.

Q. When Mr. Kiendl asked that question your answer was:

"Q. How long has that condition existed? A. Ever since my jeopardy assessment of March 3, 1948."

Is that right? A. Yes.

Q. That is what you said? A. Yes.

Q. As a matter of fact, 1951, H. Harvey & Company bought a total of 169,660 cases of whiskey, isn't that right? A. With the permission of the Government.

Q. Yes, with the permission of the Government, Mr. Klein. But with or without the permission of the Government H. Harvey & Company in the year 1951 bought a total of 169,660 cases of whiskey, is that right? A. That's right.

Q. And that was while you were doing business [7602] in name only? A. I said in name only, yes—yes.

Q. As a matter of fact, during the year 1953 H. Harvey & Company sold about half a million dollars worth of liquor, isn't that right? A. I don't remember the exact total, sir.

Q. Let me see if I can refresh your recollecting (handing to witness). A. Yes, sir; you are right.

Q. That was during 1953, is that correct? A. Is that income tax return for 1953, sir?

Q. Yes, look at it. A. You are right, sir.

Q. In 1952 H. Harvey & Company bought approximately 30,000 cases of whiskey, is that right? A. I don't remember, sir.

Q. Does that refresh your recollection? A. If your records so reveal, I would agree with you.

Q. What is your recollection, Mr. Klein? A. I don't recall whether it did or didn't.

Q. Would you care to glance at these and tell me whether during the year 1952 H. Harvey & Company bought about 30,000 cases of whiskey? [7003] A. If you say so, you probably checked them, I haven't.

Q. So that during the year 1951, when you bought approximately 170,000 cases of whiskey, during the year 1952 when you bought about 30,000 cases of whiskey, during the year 1953 when you sold approximately $500,000 worth of whiskey, you had that in mind when you told Mr. Kiendl and the Court and jury yesterday that ever since 1948 you have been doing business in name only, is that right? A. No. I did not have it in mind, Mr. Bauman.

Q. In addition to the actual purchase of liquor, Mr. Klein, and during the period after 1948, you have maintained—I withdraw that——

H. Harvey & Company has maintained and maintains at the present time substantial bank accounts in Canada, is that right? A. Yes, sir.

Q. And it is perfectly clear, then, Mr. Klein, is it not, that even after 1948 H. Harvey & Company was engaged

in the whiskey business in a substantial way? A. Only with permission of the Government.

[7604] Q. I understand that. Therefore, you were not doing business in name only after the imposition of those—— A. Let me point out something to you.

Q. Let me finish my question.

(Continuing) —after those jeopardy assessments were filed? A. For a period of 30 months after the jeopardy assessments were filed there was no activity. Then the United States Government and the Bureau of Internal Revenue, while the process of negotiations were going on for the settlement of the Government's claim against the H. Harvey Company, H. H. Klein and Gertrude Klein, they advised my attorneys at that time that they would permit me to engage in the business and not to be worried about it. However, the United Distillers of Canada, Limited, would not permit me to engage in business nor extend credit to me.

Q. Would you excuse me for a moment. I just want to hear my question so I can determine whether I ought to object to your answer.

Mr. Kiendl: Why don't you allow him to finish his answer first.

[7605] Mr. Bauman: I don't know whether his answer is responsive to my question. May I have my question read, sir?

The Court: Surely.

(Question read.)

Q. Will you answer that question, Mr. Klein? A. I still say only in name only.

Q. Would you say, Mr. Klein, that you had been doing business in name only before the jeopardy assessments were filed? A. No, sir.

Q. Just after the jeopardy assessments were filed? A. That's right.

Q. What is the purchase price of 169,000 cases of liquor, would you know? A. It would depend upon the liquor.

Q. I am talking about 1951, when you bought from Duncan Harwood 169,660 cases of whiskey. A. At that time I think it was something like $12.77, I may be wrong, the income tax return would probably show it.

Q. $12.77 a case? A. I think that's correct.

[7606] Q. I believe at the luncheon recess, Mr. Klein, we were talking about allocations or had been talking about allocations of whiskey, and just to refresh my own recollection, I believe you stated that those allocations were substantially made at the distillery in Canada, and you made minor variations in them in Baltimore, is that correct? A. When they were heavy on one jobber, yes.

Q. Was that in relation to Harwood? A. Yes, sir.

Q. And was it also the fact with relation to Auld Malcolm? A. No, sir.

Q. Did you make the allocations of Auld Malcolm? A. Yes.

Q. However, you did not make the allocations of Harwood, is that right? A. No.

Q. Certain books were kept at the office of H. Harvey & Company which you and Mr. Rokoff had called memorandum records, is that right? A. That's right.

Q. Would you tell me, please, what those memorandum records were? [7607] A. Just what do you mean by that?

Q. What did they consist of, and tell me the circumstances under which they were kept. A. Well, the circumstances under which they were kept was merely to give me

a memorandum as to what was going on in the total operation. Actually I don't believe I ever saw the record until this courtroom, right here.

Q. What actually happened was that the action papers—and you know what I mean by action papers? A. No, I do not.

Q. The original papers rather than any information copies or duplicates, do you understand that? A. Yes.

Q. When I use the words "action papers," that is what I mean, are we agreed on that? A. Yes.

Q. The action papers came to your office in Baltimore, is that right? A. About 60 days or thereabouts after the beginning of the Harwood transaction.

Q. They all came to your office in Baltimore, is that right? A. That's correct.

[7608] Q. And these records which were kept in Baltimore consisted of journals and ledgers, did they not? A. I wouldn't know, I am not a bookkeeper.

Q. They were kept by Mr. Rokoff under your direction, were they not? A. When you say they were kept under my direction, I would say yes, but in so far as understanding what a journal or a ledger is, I don't.

Q. Those records came into your office in Baltimore, they were entered in your books in Baltimore, is that correct? A. Yes.

Q. What happened to them then? A. What happened to what, sir?

Q. To the papers from which the entries have been made into the books of account which were maintained in your office in Baltimore? A. Copies were sent to Cuba for their purposes.

Q. You sent those copies from Baltimore to Cuba, isn't that right? A. When I say I sent them, not personally.

Q. They were sent from your office in Baltimore to Cuba? [7609] A. That's correct, or they were taken down to Cuba by Mr. Rosenberg.

Q. So that in every case, with the exception of those few instances where money was actually spent in Cuba, the information which was kept in the Cuban books was first in the possession of your office in Baltimore, is that right? A. Yes, I would say so.

Q. It was only with relation to those relatively minor expenses incurred in Cuba that Ellis Rosenberg would bring a schedule back to your office in Baltimore and enter them into the books in Baltimore or cause them to be entered by Mr. Rokoff? A. Not necessarily. The laws of Cuba require that an original set of books be kept of a Cuban corporation in Cuba.

Q. Yes. However, I say the only instance where Cuba had the information necessary to maintain the books before your office in Baltimore was in the case of those expenditures which were made in Cuba, right? A. I wouldn't want to answer that positively, sir.

Q. Mr. Rokoff was your bookkeeper, is that [7610] right? A. He is really a secretary, sir.

Q. What were his duties as your secretary? A. He also kept books of the Harvey Company.

Q. What else did he do? Did he take your dictation? A. Yes.

Q. Did Miss Lowy take your dictation? A. On occasion, yes.

Q. What other duties did Mr. Rokoff have in addition to taking your dictation? A. Supervise whatever office help

we had, took care of the books, wrote my personal correspondence and took care of my personal affairs.

Q. He was in effect sort of a general office manager, was he? A. You might call him that.

Q. What was Mr. Silver doing down there? A. Mr. Silver was then, I believe, an officer of the Harvey Company.

Q. What were his duties? A. During what period are you speaking?

Q. I am talking about the period from 1944 through 1947. [7611] A. I believe he was vice-president at that time. I am not sure of that.

Q. What were his duties as vice-president, Mr. Klein? A. He also I believe sold some merchandise for Williams—I think he helped Rokoff with some of his records.

Q. He worked on the books, too, did he? A. Oh, no, no, he is not a bookkeeper.

Q. He helped Rokoff with some of his records? A. Yes. There are certain regulations you must comply with as an importer, monthly reports have to be made, 52 A's and B's, the number of the strip stamps you buy have to be kept, these reports must be made to the Government on a monthly basis.

Q. This was substantially all that Mr. Silver did down there? A. I believe it is.

Q. He continued to do that sort of thing, did he not, beyond 1947 up through 1954, when he was finally—A. Up to the time he left my employment.

Q. Was that in 1954 or 1955? A. No, it was 1954, I believe.

[7612] Q. Mr. Rokoff continued his function up till 1955 and is still in your employ, is he not? A. That's correct.

Q. He operates your office in Baltimore? A. Such as it is, yes.

Q. Would you tell me, please, from whom did Mr. Rokoff obtain his instructions for the keeping of the books connected with the Harwood venture, and by the Harwood venture may I point out to you I mean all of the various whiskies, Dunbar, Auld Malcolm and the rest of them which I in my own mind place in the same category. A. Auld Malcolm of course you understand was sold by H. Harvey & Company.

Q. I do. A. Harwood was sold by R. C. Williams. In that regard, how do you want me to answer that question?

Q. You saw these memorandum books and records so-called which were introduced into evidence in the Government's case? A. I saw them in this court, yes.

Q. With specific relation to those books and records, and eliminating Tivoli for the moment from those books and records, from whom did Rokoff obtain [7013] his instructions as to the entry of those books? A. I would say the majority from me.

Q. That would happen in one of several ways, would it not, Mr. Klein; namely; you would tell him in the beginning how to set up certain sales on the books and, once having told him, he would continue without specific instructions every time invoices came in to post them in the same way, is that right? A. No, I wouldn't be able to tell him to set them up in the books, Mr. Bauman, because I don't understand books. He would have to set that up for himself.

Q. I don't mean you told him to post certain items as a debit to one account and a credit to another. A. Yes.

Q. What I am suggesting is you told Mr. Rokoff what particular transactions were supposed to represent, is that right? A. I believe I did, yes.

Q. In all but the usual repetitious entries of the sale of whiskey on those books, Mr. Rokoff would come to you and ask you what this is for and how it [7014] is to be handled, is that right? A. I would say so, yes.

Q. You heard Mr. Rokoff testify in this courtroom, did you not, that he took his instructions with relation to the keeping of the books from you. Did you hear him say that A. I don't think I was in this courtroom on that day, sir I was home after hearing of the death of my brother the day before—at my hotel.

Q. Is what I just said a fair statement, Mr. Klein, of the relationship of Mr. Rokoff? A. If you say he said that, I would assume that is so.

Q. Is it correct that Mr. Rokoff took his instructions with relation to the keeping of those memorandum books and records from you? A. Oh, yes.

Q. For instance, on a situation like this $3,000,000 situation, about which you testified yesterday — A. Yes, sir.

Q. —you would, would you not, tell Mr. Rokoff to draw a check for $3,000,000, is that right? A. Yes, sir.

[7015] Q. And you did in that case, did you not? A. I certainly did.

Q. Mr. Rokoff of course wouldn't know what that check for $3,000,000 was for, would he? A. No.

Q. Not until you told him? A. That's correct.

Q. In that situation, did you tell Mr. Rokoff what the check for $3,000,000 was for? A. I don't recall whether I did or not.

Q. Mr. Rokoff in every case would have asked you what this check was for, because he would have had to post it in the books? A. He may not have asked me at that particular time, sir.

Hyman Harvey Klein—By Defendant—Cross

Q. With relation to that transaction, you remember there has been some testimony in the courtroom, and I shall show you the page in a moment, that an entry was made with relation to that $3,000,000 check in the books of Cameron Stuart and crossed out? A. I heard that, yes.

Q. That was in the journal? A. Whatever that means.

[7016] Q. As opposed to the ledger? You don't know the difference between a journal and a ledger? A. No, I do not, Mr. Bauman.

Q. You understand or will you assume if I tell you that a journal is a book of original entry and that a ledger is a book of final entry? A. If you say so I will accept it.

Q. I want to call your attention to Government's Exhibit 378 in evidence, which is the so-called memorandum record of Cameron Stuart, and more particularly to an entry dated September 20, 1946, Compania Continental, S. A., $3,000,000? A. Yes, sir.

Q. And that is crossed out and the word "error" appears over at the end of that, is that correct? A. Yes.

Q. That entry is dated the 20th, right? A. Yes.

Q. The very next entry in the book is the 24th? A. That's right.

Q. And the very next entry in the book is the 27th? A. Yes.

[7017] Q. So that that entry dated the 20th you would say, would you not, Mr. Klein, was made some time between September 6 and September 24 into this book? A. So I would assume.

Q. Before Mr. Rokoff could enter that amount in that book, he would have had to have asked you what that was for, would he not? A. Not necessarily, sir. I might have

said to him, "Bill, make a check out to Compania Continentale for $3,000,000."

Q. But all checks of $3,000,000, Mr. Klein, would have been entered in the various memorandum records, would they not? A. It is entered, isn't it?

Q. It is crossed out, isn't it? A. When was it crossed out?

Q. You tell me. A. I don't know, sir.

Q. Did you instruct Mr. Rokoff to cross it out? A. I don't know enough about books to tell him to cross it out or put it in.

Q. Did you tell Mr. Rokoff to leave that entry off the books of Cameron Stuart? [7018] A. Not at all.

Q. That was his own idea? A. I don't say it was anybody's idea.

Q. It isn't there, is it, Mr. Klein? A. I don't know. Is it. You didn't show it to me.

Q. Here are the records (handing to witness). A. I wouldn't even know what page it is on.

Q. You have sat in this courtroom, have you not, Mr. Klein, and heard it said that that $3,000,000 does not appear in the ledger of Cameron Stuart at all, not crossed out or any other way, have you not? A. I don't know whether I was here that day or not.

Q. You don't know then whether or not that $3,000,000 appears on the books of Cameron Stuart, is that right? A. No, I do not.

Q. If it doesn't appear in the books of Cameron Stuart that was due to some omission by Rokoff who was in charge of those books, is that right? A. No. Put it this way, if I may.

[7019] I explained yesterday that what transpired in connection with the $3,000,000 from Cameron Stuart——

Q. We are familiar with that. A. If you will permit me, Mr. Bauman, I will try to answer it as best I can.

Q. Go ahead. A. I explained the $3,000,000 check from Cameron Stuart to Compania Continentale and from Compania Continentale back to Cameron Stuart. Mr. Rokoff, probably taking a shortcut—this is all supposition, you understand——

Q. I don't like to interrupt you, but I must ask you not to indulge in suppositions in answer to my questions. A. Then I cannot give you a logical answer, sir.

Q. Your answer then is that you don't know why Mr. Rokoff didn't enter that whole transaction in the book, is that right? A. Other than the fact in my own mind it was a wash-out, it came from a subsidiary to a parent and went from the parent back to the subsidiary.

[7620] Q. I understand what was in your mind about it, but I am asking you the question:

Can you tell me why it was that Mr. Rokoff did not enter that transaction at all in the books of Compania Continentale and only entered it in the journal of Cameron Stuart, to the extent of an entry which is crossed out and marked "error" and not at all in the ledger of Cameron Stuart? A. I cannot explain it other than the fact that he took maybe a bookkeeper's shortcut, because the books meant nothing to anybody but him.

[7621] Q. So the failure to record that $3 million transaction in either of these two sets of books for a period of six weeks was Mr. Rokoff's mistake and you knew nothing about it, is that right? A. I don't think it was. I wouldn't want to attribute it as a mistake, sir.

Q. It was Mr. Rokoff's failure to act without your knowledge? A. No, I wouldn't even say that. All I would

say was that he probably, by the time he got around to making the entries in the books, the checks were back and he just crossed it out and said, "Error."

Q. The check, as I remember it—and correct me if I am wrong, sir—went from Cameron Stuart to Continentale—— A. That is the parent company, yes.

Q. It was about six weeks or thereabouts before Continentale returned the $3 million to Cameron Stuart? A. That's correct.

Q. Do I understand, then, from what you are now testifying that it was not an uncommon practice for $3 million items not to be entered on these so-called memorandum books and records for a period of six weeks? [7022] A. Are you asking me whether it was not an uncommon practice?

Q. Yes. A. I don't know whether it was a common or uncommon practice, but the fact remains that the check ultimately went back to Cameron Stuart, and I suppose, taking the course he did, he just marked it "Error."

Q. The fact remains that there is no entry at all in the books of Continentale? A. I am not disputing that. You mean in the books of Cameron Stuart?

Q. I mean in the books of Continentale and the ledger of Cameron Stuart. A. I see.

Q. And I am asking you whether you knew about that at that time. A. No, I did not.

Q. Or whether it was done pursuant to your direction. A. No, it was not.

Q. Were you in the courtroom on the day that Mr. Rokoff testified, Mr. Klein? A. One day I was off. I don't remember what [7023] day he testified and what day he didn't.

Q. Do you remember my questioning Mr. Rokoff about his entries in these books? A. I believe I did; I am not sure of it, Mr. Bauman.

Q. Do you remember my questioning him more specifically about this $3 million? A. I believe I was here when you questioned him.

Q. I don't want to suggest that this was his answer, but I will ask you, do you remember Mr. Rokoff testifying that he did make these entries or handle this transaction in this way pursuant to the orders of his boss, Hyman H. Klein? A. That he did?

Q. That he handled this $3 million transaction in this way pursuant to the orders of his boss, Hyman H. Klein. A. While I won't dispute Mr. Rokoff's recollection, I don't have any recollection of telling him or that I told him to do it just that way, because there wouldn't be any reason for it.

Q. You have no recollection of telling him to leave that entry off the books, is that right? [7624] A. No, I do not.

Q. And you have no recollection of giving him any instructions at all with regard to the handling of this $3 million entry? A. How to make the entry in the book? No, sir.

Q. More particularly, sir, with whether to keep the entry off the books altogether. A. For what purpose?

Q. I am asking the questions, Mr. Klein. Would you mind answering? A. I wouldn't know the purpose of keeping it off the books, sir.

Q. And that was the kind of special transaction, was it not, that $3 million Continentale situation was the kind of transaction that Rokoff couldn't possibly know about without coming to you and asking you, isn't that right? A. You have also got to know Mr. Rokoff.

Q. Will you answer my question, sir. A. Repeat the question.

(Question read.)

A. I asked him to make the check out, so he would certainly know about it.

Q. Yes, but you asked him to make the check out, [7625] and I ask you was it like this: "Bill," or whatever you call him, "make out a check for $3 million to Continentale on the account of Cameron Stuart," right? A. Yes.

Q. Rokoff went back to his typewriter and typed out a check for $3 million, which you signed, is that right? A. Yes.

Q. That checkstub had to be entered in some book of account, did it not? A. It should have——

Q. And Rokoff, until you told him what the $3 million was for, could not possibly know what account to enter it into, isn't that right? A. But it is also possible, Mr. Bauman, that I did tell him, that he did enter it in his checkstub, that you just mentioned, and did not enter it into his book when he should have at that precise time, and by the time he came to enter it in that book, the check was back, and taking a shortcut, he put a line through it and marked "Error" on it. That is an assumption on my part.

Q. The lapse, if any, was his, is that right? A. I would say so, yes.

[7626] Q. It was not pursuant to any instructions from you to keep that $3 million off the books? A. There wasn't any mystery about the $3 million. Why should it be kept off the books?

Q. Will you answer my question more directly, please.

(Question read.)

A. No, sir.

Q. Did you ever see the Cuban books? A. No, sir, I never did.

Q. Tivoli was organized in April 1945, is that right? A. I believe that's correct.

Q. And it did not conduct any business transactions, I believe you testified, is that correct? A. No, it did not.

Q. Neither did Hannes, is that correct? A. No, sir.

Q. It is correct that Hannes did not conduct any business? A. That's correct.

Q. Do you remember being asked this question or these questions by Mr. Kiendl yesterday, and making the following answers on page 7497:

> [7627] "Q. What became of Tivoli? Was it sold to Hannes & Co, or were its assets transferred to Hannes & Co.? What became of it? A. Well, it was by an exchange of stock.
>
> "Q. Just tell us what stock was exchanged and by what companies. A. The stock of Tivoli Trading Company. 2850 shares. 2850 shares that were actually in my name were transferred. Hannes & Co. made an offer to Tivoli offering to exchange 15,000 shares of its stock for the 2850 shares of Tivoli stock, and the Tivoli stock was endorsed over to Hannes & Co."

A. That's correct.

Q. Were you the president of Hannes & Co.? A. At that time I don't recall, sir.

Q. In any event, you were the operating head of Hannes & Co.? A. I would say so.

Q. You were the operating head of Tivoli? A. I was, yes.

Q. When you say that Hannes & Co. made an offer to Tivoli, offering to exchange 15,000 shares of its stock for 2850 shares of Tivoli stock, what you meant by that was that you decided to do that, is that right? [7628] A. Well, it was a legal formality complied with. I don't know whether Rosenberg was the president of Tivoli at that time.

Q. However, Rosenberg, in his presidency, did exactly what you told him to, did he not? A. Only to the point of being a lawyer and would not agree to do anything that was illegal.

Q. I am not suggesting otherwise. But within the operation of Tivoli, Rosenberg did whatever you told him? A. The exchange of stock was a legal formality that was complied with.

Q. So when you say, as you did yesterday, that Hannes & Co. made an offer to Tivoli, you are talking about a legal formality which resulted in Hannes taking over the assets of Tivoli, is that right? A. That's correct.

Q. Both of which corporations were yours and operated by you, neither of which corporations were doing any business at all, is that right? A. They had never been activated, no, sir.

Q. I believe you also told the Court and jury yesterday that Tivoli was a sort of depository. A. I said sort of a catchall, a depository.

[7629] Q. When you formed it in April 1945, did you have it in mind as a catchall company or a depository? A. I don't believe so, no, not at that time.

Q. Do I understand, Mr. Klein, as you were forming these corporations—withdrawn.

Do I understand that you formed these corporations first and decided what to do with them later? A. Not necessarily, no, sir.

Q. That was the case with Tivoli, wasn't it? A. That might have been the case with Tivoli, yes, sir.

[7030] Q. You had this corporation, and you decided that it would be sort of a catchall or depository, is that right? A. When you say "you," sir, I am assuming that you are including the majority stockholders, three of which were Canadians.

Q. Please don't assume that because when I intend to ask you about the Canadians I shall ask you about the Canadians. When I use the word "you" I mean you, Hyman H. Klein. A. Well, then I must include those in the answer which I just gave.

Q. And was that the purpose of Tivoli from its inception? By "its inception" I mean from the time it first had any money put into the Tivoli coffers was it to serve the purpose of a catchall or depository? A. At the beginning, yes.

Q. And that is all it ever was, isn't that right? A. That is all it ever finished being, yes.

Q. Well, having in mind the beginning and the end, in the middle there was no other status, isn't that right? A. No, sir, there was not.

[7031] Mr. Bauman: May I have the stock certificates of Tivoli, please.

Mr. Kiendl: Surely (handing).

Q. Now you have stated on occasion, have you not, Mr. Klein, that Tivoli was, in its inception, owned by yourself

and the three Canadians; is that right? A. That's correct, sir.

Q. Although in fact there wasn't one stock certificate issued to the Canadians, isn't that right? A. When stock was finally issued I held it there for their beneficial interest, yes.

Q. Was there a stock certificate of Tivoli Trading Corporation ever issued in the name of Isidore J. Klein, McLennan or Norgan? A. During what period?

Q. Throughout the existence of Tivoli Trading Corporation. A. In the beginning there weren't any stock certificates outside of two qualifying shares. The four shares that were issued were actually issued and formally completed by proper signatures was the 2850 shares issued to me, yes.

Q. Yes. And the answer to my question is that [7632] at no time up until the date, which I believe was March 27, 1947 when Hannes took over the assets of Tivoli, at no time did I. J. Klein, McLennan or Norgan ever have a stock certificate of Tivoli Trading Co. S. A., made out in their names; is that right? A. Yes, but I would like to correct you and would like you to stop at one date, and that would be January 20th, which is the date which I assumed or bought control of that corporation.

Q. Regardless of the date, Mr. Klein, you understand my question, do you not? A. I am just trying to keep the record straight, Mr. Bauman.

Q. I appreciate that, but you understand I am asking you at any time. A. No, they didn't.

Q. They were never stockholders of record? A. Never stockholders of record is correct.

Q. And was that the fact with relation to the seventeen other corporations which you operated? By "you" I mean you and the Canadians. A. I think you will find in some of them that they were inter-related companies and therefore [7633] subsidiaries of others and therefore owned the stock of the—owned all of the outstanding stock. For example, in the case of Cameron Stuart, which was a wholly-owned subsidiary of Compania Continentale and Compania Continentale was a wholly-owned subsidiary of Seaboard, I believe. Therefore there wouldn't be any stock issued in their name outside of Seaboard.

Q. Yes, the parent corporation of each one of those companies, or I suppose you might say the grandparent corporation, if you go up through three of them, the stock of that parent corporation, Mr. Klein, was that held by you as an equitable holder for the Canadians? A. Well, let's start with the first one, Agencias Destiladores, formed on January 20th— I say January 20th, I may be wrong. I know it was in January 1944. That stock wasn't issued to everyone until October.

Q. But it was issued? A. Eventually, yes.

Q. Can you tell me the names of any of these parent corporations wherein the Canadians—and you know by "Canadians" to whom I am referring—— A. I understand you.

Q. Can you tell me the names of any other [7634] corporations in the Harwood situation wherein the Canadians did not in fact have stock issued to them other than those which were subsidiaries of the holding companies? A. I don't recall any, sir. There may have been, but I don't recall any.

Q. Well, the fact is, is it not, Mr. Klein, that the only one of these corporations wherein you claim the Canadians were stockholders but stock was not actually issued to them was in the case of Tivoli, isn't that right? A. You say I claim. Does anyone make a claim that they were not stockholders?

Mr. Bauman: Would you read the question, please.

(Question read.)

Mr. Bauman: Would you answer that question, sir.

A. I don't recall.

Q. Is that your best recollection, Mr. Klein? A. That is my best recollection.

Q. You cannot think of one case in which other than Tivoli that fact prevailed? A. I can't.

[7635] Q. I just want to make sure. A. I can't think of one, but I don't recall if that is definite or not.

Q. Yes. There came a time, did there not, Mr. Klein, when you offered to a number of individuals whom you discussed here yesterday and today, the opportunity to come into the Tiovli situation, is that right? A. That's correct, sir. Now when you say I offered, I offered on behalf of myself and my three associates.

Q. Yes. When did you have a conversation with your three associates with relation to these individuals coming in? A. Sometime in the year—what was the year that Tivoli was formed, sir?

Q. 1945. A. Early, probably, that year or sometime during the summer of that year. I probably was in Vancouver sometime that year.

Q. And showing you Defendant Klein's Exhibit E—I think that is U or V, I can't read it——

Mr. Bauman: Mr. Anderson, will you tell me what that is?

[7630] The Clerk: EU.

Q. —EU, which are the certificates which were never issued to Morris Alprin, Irving Koerner, Albert Roer, H. S. Lechtzier, Ellis Rosenberg, Harry Silver and William Rokoff, you notice that those were dated for issue November 26, 1945. A. That's right.

Q. Was it at about that time that you had a conversation with your Canadian associates about taking these individuals into Tivoli as stockholders? A. It could have been a month before; it could have been three months before, sir.

Q. Anywhere between one and three months before? A. It could well be, yes, sir.

Q. Any time between that time——A. I don't recall the exact time.

Q. From July on? A. I don't recall.

Q. Your practice in traveling to Vancouver was to go up there during the summer, was it not? A. Yes, but sometimes I made special trips if the occasion necessitated.

Q. And do you remember where this conversation [7637] took place between you and your Canadian associates? A. Well, it would either take place in their offices in the distillery or in my hotel room.

Q. Up in Vancouver? A. That's correct.

Q. Your best recollection is that the conversation did in fact take place in Vancouver? A. That is at present my best recollection.

Q. Who was present at that time? A. A. L. McLennan and my brother.

Q. Mr. Norgan was not there? A. No. Mr. Norgan traveled a great deal.

Q. What is your best recollection as to conversation on that occasion? I would like to know who said what, to the best of your recollection. A. Oh, I am sorry.

Q. Just try, would you, please? A. I have tried to refresh my memory on that on many occasions other than this one here.

Q. And you have no recollection of what was said on that occasion? A. I have not, sir.

Q. But there was some sort of a discussion up there in Canada about the individuals named in those [7638] certificates? A. There was some discussion about that, yes, sir, about permitting them to subscribe to stock, yes.

Q. And you haven't the slightest recollection of what that conversation was? A. Not with any assurance, no, sir.

Q. Well, after you came back from Vancouver—withdrawn.

It was your practice during those years, Mr. Klein, to stop by in New York on your way back from Vancouver before going to Maryland, wasn't it? A. Not necessarily.

Q. Sometime around Labor Day. A. Not necessarily at all. I would come through on the Liberty Limited, through Chicago, direct to Baltimore.

Q. How long after you had this conversation in Canada that you don't remember, that you saw any of the individuals concerned with relation to permitting them to buy stock. A. I think I stated something about it being sometime in September.

Q. In September 1945, is that right? [7639] A. That's correct.

Q. Now who is the first one you saw about this? A. That I don't recall, sir. It could have been Roer, it could have been Irving Koerner, it could have been——

Q. It could have been any of the seven individuals named there, isn't that correct? A. It could have been any one of the seven individuals named there that's correct.

Q. And you don't remember who it was? A. No, I do not, sir.

Q. Do you know whether you saw them individually or in groups? A. Well, I would see Silver in Baltimore, Rosenberg in Baltimore and certainly Rokoff in Baltimore. Now if you are asking me did I call them into my office and make a speech about it, my answer would be no.

Q. I would assume, Mr. Klein, that when you got down to Baltimore in your office you told Rosenberg, Silver and Rokoff as the occasion arose about this plan, is that right? A. (The witness nods.)

Q. Now let us talk more specifically about [7640] Ellis Rosenberg. Did he maintain an office with you? A. Yes, I believe he did. I believe he also had an office in Washington.

Q. But he maintained an office with you, Mr. Klein? A. Yes, he did.

Q. And on this occasion when you spoke to Mr. Rosenberg about Tivoli Trading, tell me to the best of your recollection what you said to Mr. Rosenberg and what he said to you. A. I don't believe he said very much other than the fact that I said to him, "Ellis, that Tivoli Trading Company, you know we agreed in Vancouver to permit certain

people to subscribe to the stock and you are going to be given an allocation of so many shares of stock."

Q. I wonder if I could ask you to speak a little louder. Could you speak a little louder? I can't hear you. A. "That it has been decided in Vancouver that you will be permitted to subscribe to a certain amount of stock in the Tivoli Trading Company, and whenever you get around to it, give me a check for it."

[7641] Q. And what did Mr. Rosenberg say to you? A. At that precise time he said nothing.

Q. Did he know that the Tivoli Trading Company was just a catchall or depository? A. Oh, yes.

Q. Did he know how much money there was in the Tivoli Trading Company at that time? A. I don't think there was any money in Tivoli at that time.

Q. There wasn't any money in Tivoli at that time? A. I don't think so.

Q. So he knew that you were offering him an opportunity to subscribe—withdrawn.

You told him that you were offering him an opportunity to subscribe to 200 shares in a catchall or a depository corporation, is that right? A. That's correct.

Q. What did he say about that on that occasion? A. There was no conversation about it because——

Q. There was no conversation about it? A. The mere fact—the mere fact——

Q. No. Excuse me. I just asked what was said, Mr. Klein. [7642] A. I don't recall him saying anything, sir.

Q. Did he sit down and write out a check? A. I don't recall that either.

Q. Sooner or later he gave you a check, isn't that right? A. That's right.

Q. But you don't remember when it was? A. No, sir.

Q. At the time you had this first conversation with him, he didn't say thing to you like "I don't think it is a good idea, H. H.," or Mr. Klein, or whatever he called you? A. He may have.

Q. But you don't remember it? A. I wouldn't say positively that he didn't.

Q. And you wouldn't say positively that he did? A. No, I would not.

Q. As a matter of fact, you have no recollection at all as to whether he did or he didn't? A. That precise time, no, sir. My recollection is very vivid, however, when he came back with those certificates.

Q. Yes, we will come to that in a moment. But at the time you spoke to him about it, you are very [7043] vivid, too, about the fact that you told him what the check was for, a subscription to Tivoli stock. A. Yes.

Q. And did you tell him at that time, on that first occasion, why you were going to permit him to subscribe to Tivoli stock? A. I don't recall whether I did or I didn't, Mr. Bauman.

Q. You have no recollection of that? A. No, I do not. I do insofar as some of the others, but I do not insofar as Mr. Rosenberg is concerned.

Q. Did you tell Mr. Rosenberg that his was a job well done and that you were going to take him into the family? A. Oh, no, sir.

Q. Who of the remaining—withdrawn.

Who of Mr. Alprin, Mr. Koerner and Mr. Roer did you first see about this Tivoli Trading opportunity that you were giving them? A. Well, I think that could be

best evidenced by the checks that they issued in payment of the stock.

Mr. Bauman: May I have the checks, please.

Do you have the originals?

[7644] Mr. Kiendl: Yes.

Have you the ones you wanted?

Mr. Bauman: Yes, I have.

Q. Mr. Klein, Mr. Roer's is dated September 25, 1945. It is Defendant Roer's Exhibit EH. A. I would say it would be probably that day or a few days before or a week before.

Q. Where did you see Mr. Roer? A. I didn't hear you, sir.

Q. I beg your pardon. Where did you see Mr. Roer? A. It could have been New York or Baltimore.

Q. Do you remember? A. No, I do not, sir.

Q. Do you remember what your conversation with him was? A. Only to the effect that we were going to permit him to subscribe to so many shares of stock in a company that was going to pay him a bonus.

Q. What did you say to him and what did he say to you, more particularly? A. I don't believe he said anything to me, Mr. Bauman.

Q. You simply told him you were going to permit [7645] him to subscribe to 1000 shares of Tivoli Trading Company stock? A. And that we may do something with the company other than that, but meantime this company would be responsible for the bonus that would be due him.

Q. You told him that you were going to pay him the bonus and that the Tivoli Trading Company would be the one that would be responsible for it? A. That's right, sir.

Q. Was that the first time you told Mr. Roer that you were going to pay him a bonus? A. Oh, no.

Q. You told him that before? A. I told him that before, yes.

Q. And that was on the occasion that you said you were going to base it on a certain amount per case of the goods that Mr. Roer sold himself, is that right? A. Personally.

Q. Is that right? A. You see, this is dated September 25, 1945, and there was a meeting in Winnepeg either in the late fall of 1944 or the early winter of 1945.

Q. What was the amount per case that Mr. Roer [7646] was going to get? A. As I explained yesterday in direct examination, Mr. Bauman, I don't recall.

Q. You have no recollection at all? A. It certainly is easily calculated, but I don't recall.

Q. I am aware of that. Do you recall what it was? A. No, I do not.

Q. You don't recall? A. No.

Q. Do you recall the amount per case that Koerner and Alprin were to get? A. No, I do not.

Q. That of course was an identical amount per case and was based on the total cases sold. A. Based on the national total sold, yes.

Q. On this particular occasion on or about the date of that check on the table before you, you had that conversation with Mr. Roer in which you told him that Tivoli was going to be responsible for the bonus which you previously had promised, is that right? A. That's correct, sir.

Q. Was that the entire conversation? [7647] A. And that probably Tivoli—maybe some words to the effect that we might make Tivoli an active corporation—something like that.

Q. Would you please tell me your best recollection of what the words to that effect were. A. I don't have a direct recollection of the words.

Q. Do you have a recollection of having told him that Tivoli might become an active corporation? A. I think it is possible.

Q. I know it is possible, but do you remember it happened? A. No, I don't want to make a positive statement to that effect.

Q. Of course the second, the next check is dated October 2, 1945 and that is the check of I. A. Koerner, Government's Exhibit 250. A. Well, the conversation would be along the same lines.

Q. I would like you to state more specifically Mr. Klein, and tell me if you can where you met Mr. Koerner and had this conversation with him. A. Well, it could have been in New York, Mr. Bauman, or it could have been in Baltimore.

[7648] Q. You don't remember? A. No, I don't.

Q. What was said by Mr. Koerner and what was said by you? A. Much the same language that I have already expressed.

Q. Would you mind repeating it, because I would like to have these conversations narrated individually if I may? A. In the same substance: that we were permitting him to subscribe to stock of this company, which company would in due course pay him a bonus, and it might be possible that we may activate the company.

Now that is a supposition, the last part of it, as I said before.

Mr. Bauman: I move that the supposition be stricken.

The Court: Granted.

Q. Is that your best recollection of the entire conversation that you had with Mr. Koerner on that occasion? A. That may not have been the entire conversation but that is the substance of what I said and that is what I recollect.

[7648a] Q. Do you remember anything else about that conversation? A. No, I do not.

[7649] Q. Now here is the third one which is dated October 3, 1945, Defendant Alprin's Exhibit EG.

Where did you see Mr. Alprin at that time? A. Again, sir, it might have been New York or Baltimore.

Q. And do you remember where it was? A. If it was in New York it could have been in his office or it could have been in my hotel.

Q. But I am asking do you remember where the meeting took place? A. No, I do not, sir. I am sorry.

Q. Do you remember specifically or even generally what was said on that occasion? A. No, not any more than in the case of Mr. Koerner and Mr. Roer.

Q. In other words, you have no recollection of any of these conversations beyond the fact that you told each one of these individuals individually, is that correct? A. That is correct.

Q. That you were going to give them an opportunity to buy this stock of Tivoli in the amounts you specified, is that correct? A. No, when you say I was going to give them an [7650] opportunity may I correct you that we were going to give them an opportunity.

Q. You and the three—— A. And the three Canadians.

Q. And the three Canadians were going to give them an opportunity to buy this stock. And that was in late

September and early October 1945, is that right? A. Yes, that is right.

Q. When for the first time did you meet Maurice Haas, Mr. Klein? A. I believe I stated in my Internal Revenue interrogatories at one time when I was up here on Broadway that I met him in 1945 but I have since been informed that I was in error, that I never met him until the fall of 1946.

Q. Mr. Haas told you that? A. Someone told me that. I don't remember who told me that.

Q. Well, wasn't it Mr. Haas who told you that? A. I don't remember whether it was Mr. Haas or Mr. Alprin. I think it was Mr. Alprin probably told me—or Mr. Haas.

Q. It was either Mr. Haas or Mr. Alprin who [7651] told you that you hadn't met Mr. Haas at the time you told the Internal Revenue Service but at some other time? A. Well, no, what I said to him I thought it was 1945 but I didn't recall. It never was pressed further at that time and I still don't recall; although I said 1945 it is quite possible I did not meet him until 1946 because I didn't get—I think that opinion that was requested of Mr. Haas, the second opinion that we were discussing this morning is dated in 1945, the spring of 1945, isn't it?

The Court: February.

The Witness: February.

The Court: 2.15—I didn't mean to say 2.15; I meant to say a ten minute recess (laughter). You have got me confused.

The Witness: I hope not, sir.

(Short recess.)

The Court: Before you resume I should like to make an announcement.

You know in the Army there is an expression they tell me: Scrounging. That's the process of grabbing that which is loose and nobody else lays claim to and we do a little of it around here. [7652] The thermostatic fact was pointed out by Mr. Anderson and my bailiff that Room 1306 is about 10 degrees cooler than this courtroom, and I have been trying to get the engineer to give us more cooling and he says he can't because this room is on the wrong side of the building, whatever that means. In any event I just found out that 1306 was relinquished by Judge Davis, the visiting judge who has been using it, and when we resume Monday at 2.15 we are resuming in 1306. I think we will be a little more comfortable over there." And of course the comparable rooms for jurors and the litigants on the other side of the building are assigned for the balance of the trial if you understand what I mean. When you come into the jury room you will go into the jury room on the 1306 side and the defendants will have the comparable room over there and the Government will have the comparable room on that side. So when you resume at 2.15 on Monday it will be in Room 1306.

All right, Mr. Bauman.

By Mr. Bauman:

Q. I believe we were discussing at the recess, [7653] Mr. Klein, who it was who refreshed your recollection about the fact that it was in 1946 rather than 1945 that you first met Mr. Haas. Remember that? A. Yes, sir.

Q. And as I understood your answer you said it was either Mr. Alprin or Mr. Haas, is that right? A. That is correct, sir.

Q. Now yesterday when you were asked that question:

"And when did you first meet Mr. Haas?"

Did you make this answer:

"I stated at one time in the interrogation with Victory and McCarthy that I met Mr. Haas in 1945, but I said I didn't recall. But it has been called to my attention by Mr. Haas that I didn't meet him until the fall of 1946."

A. That is right.

Q. So it was Mr. Haas and not Mr. Alprin, is that right? A. If I said Mr. Haas then it must have been Mr. Haas.

Q. And you discussed that with Mr. Haas of course during the course of this trial, is that [7654] right? A. I think so, sir, yes.

Q. And when in 1946 was it that you met Mr. Haas? A. Well, I am confused down to the point where I don't know whether I met him in 1945 or 1946.

Q. Well, you don't remember then whether you met him in 1945 or 1946, is that right? A. I said when I was interrogated by Mr. Victory——

Q. Can you please answer, Mr. Klein, whether or not you now remember whether it was 1945 or 1946 that you first met Mr. Haas? A. If you are asking me do I have a definite recollection did I meet him in 1945 or 1946 my answer would have to be no, I do not.

Q. All right. When was it that you met him for the first time? A. I believe in his office.

Q. In New York City? A. Yes, sir.

Q. And did he come down to your office in Baltimore on any occasion? A. Yes, I believe on one occasion.

Q. When was that? A. I believe when he got the check to La Ribera. [7655] He might have been there on more than one occasion but I don't have any definite recollection about that, sir.

Q. Was he down in——

The Court: Excuse me, Mr. Bauman, did you hear what the witness added to his answer?

Mr. Bauman: I did not.

The Court: Will you read it back?

(Answer read.)

Q. Well, he was down long before February 1947, wasn't he? Mr. Haas was in your office in Baltimore well before 1947, isn't that right? A. Well, well before 1947? I won't make any positive assertion as to that, sir.

Q. How about the fall of 1946? Do you remember Mr. Haas being in your office in Baltimore in 1946? A. No, I do not, sir.

Q. Do you remember having a conversation with Mr. Haas in which you explained to him the various corporations that you had? A. No, I do not.

Q. Do you remember his being in your office in Baltimore and your explaining to him the function of each of those corporations? [7656] A. No, I do not, sir.

Q. Do you remember telling Mr. Haas at any time before the end of 1946 that you were going to sell out your interests in the Cuban and Panamanian corporations? A. I have no such recollection, sir.

Q. Do you have any recollection of having seen Mr Haas in 1946? A. I don't have any. No, I don't have any recollection of even seeing him in 1945 at this date.

Q. Well, it was not later than 1946, was it, Mr. Klein, that you saw Mr. Haas for the first time? A. Not later than 1946? No, I wouldn't think so, no, sir.

Q. It was either in 1945 or 1946, right? A. Yes.

Q. When for the first time did you tell Mr. Haas that you were planning on selling out your interests in the Canadian—in the Cuban and Panamanian corporations? A. I think when I showed him the trial balances.

Q. When was that? A. That was either the latter part of December [7657] of 1946 or the early part of January 1947.

Q. And did you at any time before the latter part of December 1946 or the early part of 1947 in your office in Baltimore explain to Mr. Haas the functioning of each corporation in the Harwood set-up? A. I have no such recollection, sir.

Q. And you wouldn't say that did not happen, would you? A. If you are asking me did it happen or would I say it did not happen?

Q. You are saying, Mr. Klein, you don't remember whether it happened or not? A. No, I have no recollection of it, no, sir.

Q. You have no recollection of it having happened? A. No, sir.

Q. Did you ask to prepare certain consolidated balance sheets for Seaboard, Regan Potter and Waldorf? A. In connection with my assuming outlets.

Q. Yes. And when did you do that? Was that in the latter part of December or early part of January, 1947? [7058] A. That's right.

Q. And did Mr. Haas prepare those balance sheets? A. He did, sir.

Q. I show you Government's 371 for identification and I ask you did you ever see the original of that. A. I am sure I did, sir.

Q. Is that a photostatic copy of the consolidated balance sheets that Mr. Haas prepared for you at your request? A. If you say it is, sir, it is so many years——

Q. I am not saying; I am asking. A. It is so many years since I have taken a look at anything like this that I would—you want me to say it with assurance and I cannot.

Q. Just look at it, please, and tell me whether you recognize that as a photostatic copy of consolidated balance sheets prepared at your request by Mr. Haas of those companies? Would you look at it carefully, please, Mr. Klein? A. I will assume that they are, sir.

Mr. Bauman: I offer it in evidence.

[7059] Mr. Bender: No objection.

The Court: Mr. Kiendl?

Mr. Bender: I am sorry.

Mr. Kiendl: No objection.

Mr. Donohue: The defendant Alprin objects on the ground that it is not binding on him, your Honor.

The Court: Sustained. It will be received as to the defendants Klein and Haas.

(Government's Exhibit 371 received in evidence.)

Q. Government's Exhibit 371 is dated December 31, 1946, Mr. Klein——

Mr. Bauman: I guess I ought to describe this to the jury.

May I, sir?

The Court: Surely.

(Mr. Bauman reads Government's Exhibit 371 to the jury.)

Mr. Bauman: Would you like to read any more to the jury of that exhibit, Mr. Kiendl?

Mr. Kiendl: I would like to, but I won't take the time.

Q. That exhibit was sent to you with a forwarding [7660] letter dated January 16, 1947, is that right? A. I don't remember, Mr. Bauman, whether he mailed it to me or whether I picked it up in New York.

Q. However, it was on or about that day, January 16, that you received the original of Government's Exhibit 371, is that right? A. That's correct.

Q. You don't remember whether it was mailed to you or whether you picked it up in his office in New York? A. That's correct.

Q. Before Mr. Haas drew them, did you turn them over —withdrawn.

Before Mr. Haas drew them, did you turn over to him certain balance sheets, and I am referring particularly to Government's Exhibit 381, the originals of Government's Exhibit 381? A. You mean trial balances?

Q. They consist of trial balances, balance sheets and profit and loss statements.

You see, you did pick me up on an accounting term. A. Only since I heard so much about it in this [7061] courtroom since April 4th.

Q. I understand that. Is that the original—was the original of that the one that you gave to Mr. Haas? A. I would think so, sir.

Q. Speak loud enough for the jury. A. I would think so, I couldn't identify them. Unless I had my initials on them, I wouldn't want to say.

Q. Do they look like the ones that you gave to him? A. I would say so.

Q. How long before he gave you that statement, Government's Exhibit 371 in evidence, did you give him the balance sheets and trial balances, Exhibit 381?

The Court: And profit and loss statements.

Mr. Bauman: Thank you, sir.

Q. (Continuing) And profit and loss statements. A. No doubt some time in the latter part of December, sir.

Q. Had you seen Mr. Haas about the corporate set-up before the latter part of December? A. Did I see him?

[7062] Q. And explained your corporate set-up to him before you gave him these various accounting reports, Government's Exhibit 381? A. I don't think I ever discussed with him the set-up of the foreign companies.

Q. As a matter of fact, you couldn't have given him these trial balance sheets, balance sheets and profit and loss statements before the end of December because they are dated December 31, 1946, isn't that right? A. That wouldn't make any difference.

Q. That wouldn't make any difference? A. Not the fact. These companies stopped operating October 1. It would be just as easy to draw a trial balance dated December 1 on November 1st as it would be to draw it on December 31st, which would have to be made up on January 2nd.

Q. So that these accounting reports, Government's Exhibits 381, each and every one of which is dated, those which are dated, are dated December 31, 1946, might have been prepared as much as two months before that date, is that right? A. No, that is an exaggeration, sir.

Q. I thought I understood you to say that. [7663] A. I thought it would have been just as easy, but I am not making that as a positive assertion.

Q. I am now asking you, Mr. Klein, is it the fact that Government's Exhibit 381 may have been prepared as early as November 1, 1946? A. They may have, but I doubt it.

Q. What is your recollection as to the time at which it was prepared? A. I wouldn't remember.

Q. When for the first time did you see them? A. I don't recall that, probably some time in December or maybe the first part of January.

Q. Do you recall when you saw them? A. No.

Q. These were the profit and loss statements, balance sheets and trial balances of the entire Harwood operation, were they not? A. Yes, they were.

Q. These were the basis upon which you were going to be paid out of the Harwood situation, is that right?

A. No, the basis was going to be the consolidated balance sheet prepared by an auditor.

[7064] Q. Prepared by an auditor based upon Government's Exhibit 381, these reports, is that right? A. Based upon those facts.

Q. So that these papers, sir, when you got them, were the papers that were going to be put into the final report and upon which your interest in Harwood was going to be bought out, is that right? A. Yes, but—I will say yes, at the moment.

Q. They were very important papers to you, were they not? A. Yes.

Q. Do you remember studying them when you got them? A. No, sir.

Q. Did you look at them carefully? A. I looked at them, but I wouldn't say very carefully.

Q. Not very carefully? A. No, sir. The importance of the consolidated balance sheet, which was going to be prepared——

Q. You were going to study the consolidated balance sheet that came later, is that right? [7065] A. That's correct.

Q. And you had no particular interest in the individual balance sheets of the various companies, is that right? A. I wouldn't say I didn't have any particular interest. I had quite an interest, but for me to study them, as you indicated I might have, I don't have any such recollection.

Q. I understood you to say you paid no particular interest to them, is that right? A. That would be a misstatement of fact if I said that.

Q. Then you did pay particular interest to them? A. I don't say particular interest, but I say I looked at them, yes, definitely.

Q. You came to a conclusion as to about how much money you were going to get out of the Harwood deal, based on those reports? A. Subject to any adjustments that may have been made by a consolidated balance sheet.

Q. How long did you have those reports before you gave them to Haas? A. I don't have any recollection.

[7666] Q. Where did you give them to Haas? A. Whether I gave them to him in Baltimore or in New York, I don't recall.

Q. However, you have no doubt that you gave them to him? A. I don't think there is any question.

Q. You have no doubt you were the one who asked Rokoff to take off those trial balances, is that right? A. I am sure I did.

Q. At the time you caused these trial balances to be taken off, balance sheets and profit and loss statements, your had already decided to sell out your interest, right, Mr. Klein? A. Yes.

Q. And you had communicated that to your Canadian associates, is that right? A. That's right.

Q. As a practical matter, after October 1946, the whole Harwood deal was at an end anyhow, was it not? A. Only in so far as it affected the foreign companies.

Q. Only in so far as it affected the Cuban [7667] and Panamanian companies? A. Yes.

Q. The distillery sold direct to R. C. Williams? A. R. C. Williams and subsequently to Carillon.

Q. So far as the various Cuban and Panamanian companies were concerned, that was over, the Harwood deal was over? A. Yes.

Q. That ended on or about October 1, 1946? A. I think it did end September 30, at midnight, or something along those lines.

Q. As a matter of fact, you knew the Harwood deal was going to come to an end when there was that first termination of OPA in 1946, isn't that right? A. No, not necessarily, sir.

Q. You knew, did you not, that the contract with Williams was due to expire at the expiration of the OPA? A. Only as a firm contract, as it applied to the provisions which it contained, that the contract was to be in existence only to the time that the OPA ceased its operations.

Q. Let me ask you it in this way: You knew the contract provided that it was to terminate when OPA terminated? [7068] A. That's right.

Q. No question about that? A. None whatever.

Q. And you knew in June and July 1946, by reading the newspapers, that the OPA was going to terminate, isn't that right? A. No, you are not correct.

Q. You correct me, Mr. Klein. A. There was a hiatus of about 30 days, when Congress refused to extend the OPA statute.

Q. Didn't that hiatus start in July 1946? A. I don't remember.

Q. Didn't it extend for about a period of a month? A. I think it was 30 days.

Q. Then did not the Congress extend the OPA Act for approximately a month or five weeks? A. Something like that, I don't remember. As it applied to liquor, because

of it being a luxury item, but many other items remained on OPA.

Q. We are talking about liquor and Harwood's in particular. A. Yes.

Q. You knew in June, did you not, Mr. Klein, that the days of OPA were numbered? [7069] A. You are asking me to assume what the Government of the United States was going to do, and I won't make that assumption.

Q. You knew in July, on July 25, or thereabouts, that the OPA had expired? A. That Congress had permitted it to expire, yes.

Q. No matter how it expired, you knew it had expired? A. Yes.

Q. And you knew then that at that moment the contract with R. C. Williams was through, is that right? A. As a matter of fact, I think they were notified that they were doing business on an at-will basis.

Q. Then you knew when it was extended for a four or five-week period that that was going to be the absolute end of it, you knew that? A. In so far as the contract was concerned. Yes.

Q. So you knew on or about July 25 that the end of the R. C. Williams contract with Agencias was very close, is that right? [7070] A. You are trying to pin me down by saying that I knew on July 25th.

Q. I am asking you: Did you know when the OPA went out of existence on July 25th that the end of the Agencias contract with R. C. Williams was in sight? A. If Congress didn't reenact the extended provisions, yes, automatically it would have ended.

Q. When did you start to talk to your Canadian associates about buying your shares of the venture out? A. Not until some time in December.

Q. You did not talk to them at all until December about that? A. About buying me out?

Q. Yes. A. No, sir.

Q. Where did that conversation take place? A. I believe it took place—I believe it was Montreal.

Q. Who was present on that occasion? A. I. J. Klein and McLennan I think was en route to Europe, either en route to Europe or he was in Europe, or was going to Europe, I will put it that way.

Mr. I. J. Klein was there? A. Yes.

[7671] Q. Mr. Norgan was there? A. No, Mr. Norgan was not there.

Q. Mr. McLennan was there? A. I won't say he was there, but I think he was——

Q. You think he was there but he may not have been there? A. He might have been in Europe or en route.

Q. The only two people present on that occasion may have been yourself and your brother? A. That's right.

Q. Did you tell him on that occasion that you intended to take your money out of the venture? A. No. What prompted my selling out completely, sir, was the fact that this distillery that we proposed to purchase, the deal had fallen through and I saw no reason why my investment should be completely tied up in that deal.

Q. With relation to the termination of the OPA, Mr. Klein, were you asked this question yesterday and did you make this answer, reading from page 7463:

> "Q. At that time was it known that the period of OPA was coming to a close?"

So you will know what period I am talking [7672] about, I will read the previous question and answer:

> "Q. Bearing in mind that Count 5 charges that a conspiracy began on or about June 1, 1946, will you tell us what the situation was in June 1946, so far as these whiskey transactions were concerned. First, will you tell us whether or not R. C. Williams & Co. at that time continued to be the sole distributing agent for Harwood's Blended Canadian Whiskey in the United States. A. They did.
>
> "Q. At that time was it known that the period of OPA was coming to a close? A. It was common talk in the industry that it being a luxury item, that whiskey was due to be decontrolled within a reasonable time. As a matter of fact, I believe it was during the month of June that there was an hiatus for approximately 30 days before it was put back on control. Then I think it was finally eliminated somewhere along about October 1st."

So that in June 1946 it was common talk in the industry, was it not, of which you were aware, Mr. Klein, that the end of OPA control of liquor was [7673] in sight; is that right? A. Mr. Bauman——

Q. Is that right? A. My answer today is not at variance with that.

Q. I am asking you if that is right. A. Yes, sir, you are correct.

Q. This meeting which you are telling us about at which you and your brother were present, and maybe Mr.

McLennan, if he wasn't en route to Europe, took place when? A. I believe some time in December.

Q. And you did not see or talk with any of your Canadian associates about the possibility of your withdrawing until that time? A. I don't believe so, sir.

Q. What did you tell your brother about wanting to take your money out of the Harwood venture? A. The fact that we had anticipated buying a distillery, as I mentioned yesterday, in Scotland, and the fact that the deal had fallen through, as a matter of fact, that is what leads me to believe that maybe McLennan was there at the time and the deal did fall through, that I saw no purpose in [7674] keeping that large amount of funds tied up, lying idle, invested in Government securities, and I wanted to liquidate my interest.

Q. Did you tell him when you were going to do it? A. As soon as I could get a proper balance sheet prepared that would warrant the selling of my interest in the company, yes.

Q. Did he agree to it? A. He agreed as well as McLennan. I think he either talked to McLennan on the long distance telephone, and that is what again leads me to believe that McLennan was then in Europe.

Q. The fact is you don't remember whether McLennan was there or not? A. Other than I have a vague recollection of him telephoning McLennan to London, and I have no doubt he communicated with Norgan as well, because they were in unanimous agreement that I do so.

Q. You told your brother and your brother agreed and McLennan agreed, whether he was present or on the long distance telephone, that you were going to take your money out? A. Yes.

[7675] Q. And that occurred toward the end of December? A. I would say so.

Q. Did you then have these financial statements, Government's Exhibit 381, prepared or had they been prepared in advance of your conference with your brother? A. They could very well have been prepared in advance, because Vancouver—I mean the three Canadians—would have wanted to know what was going on in any event and would have requested it.

Q. Do you remember whether they were prepared in advance or not? A. No, I wouldn't say with any positive assurance, sir.

[7676] Q. Would you tell me, please, to the best of your recollection what it was that you said to whoever was present at this conference and what was said to you about the withdrawal of your funds? I would like to know, to the best of your recollection the entire conversation that took place on that occasion. A. Other than what I have already said to you, that the inactivity of the funds, permitting them to lie idle, invested in government securities, wasn't my idea of an operation.

Q. Was that the entire conversation? A. It wouldn't have to be much more. It was a statement of fact.

Q. Was that the entire conversation, if you remember? A. I don't remember that was the entire conversation or there was some discussion about it.

Q. Do I understand that you said you were going to take out one-quarter of the profits of the companies? A. And I wanted to buy one of the companies.

Q. What company? A. Tivoli Trading Company.

Q. This was what you told your brother on the occasion of this meeting up in Canada? A. [7677] That's right.

Q. And that was sometime in late 1947? A. 1946.

Q. 1946? A. Yes.

Q. Is that right? A. That's correct.

Q. So it was agreed right then and there that you were going to buy Tivoli and you would get one-quarter of the total overall venture, is that right? A. Yes.

Q. Was the price of Tivoli agreed upon? A. Was the price of Tivoli agreed upon?

Q. Yes. A. I believe it was, yes.

Q. Right then and there? A. I don't believe it was, not at that precise moment.

Q. When was the price of Tivoli agreed upon? A. I believe probably a week or so later, maybe ten days later.

Q. Before the first of the year? A. It could have been the first of the year or shortly thereafter.

[7678] Q. Right around the first of 1947, is that right? A. Either then or a week before.

Q. Within a week before, right about the first or a week in January? A. Around then.

Q. What is your best recollection? A. I don't have any recollection.

Q. Tell me whether it was within a month or six weeks. A. I am not able to give you that.

Q. Will you tell me about when it was. A. That is asking it another way.

Q. I am trying to get to the answer of it.

Can you tell me whether it was in June of 1948? A. No, it wouldn't be in June 1948.

Q. Was it in February 1948? A. Of course not.

Q. Was it in December 1947? A. No. I sold out January 20, 1947.

Q. Was it in January 1947 that you agreed on the price of Tivoli with your Canadian associates? A. It could very well be, but I won't say with [7679] assurance that it was that particular day.

Q. Could it have been in December 1946 that you agreed upon that transaction? A. Either in December or January. I will put it that way.

Q. So it was either in December 1946 or January 1947, is that right? A. That's correct.

Q. No question about that now, is there? A. It could be the latter. I would say it would be the latter part of December.

Q. 1946? A. Yes, either that or January. I am not quite sure—I am inclined to think, Mr. Bauman: it was sometime in January.

Q. Certainly not beyond that, is that right? A. It couldn't very well be.

Q. And not beyond the 15th of January 1947, is that right? A. I wouldn't think so.

Q. It is your best answer now that the time you agreed upon a price for the purchase of Tivoli was in the first two weeks of January 1947, is that right? [7680] A. I would say so, yes.

Q. In January 1947, when you withdrew your funds, your share, Tivoli was yours; is that right? A. Yes.

Q. The Canadians were out of Tivoli then, right? A. Yes; there was some discussion——

Q. Excuse me, please. From that point on you had taken what you testified yesterday was a businessman's risk in buying a corporation with assets of at least $1.9 million for $375,000, because there were contingent liabilities outstanding, is that right? A. That's correct.

Q. And the assets of Tivoli at the time you bought Tivoli for $375,000 were at least $1.9 million; is that right? A. Subject to the——

Q. Subject to the contingent liabilities which had not been determined, is that right? A. A good part of it had been determined, yes. Eight hundred some-odd thousand dollars had been determined, I believe, at that point.

Q. Those were the three checks received by Roer, Alprin and Koerner? [7681] A. That's right.

Q. So that you know at that point that you had paid $375,000 for a corporation worth a minimum of $1.1 million before considering the contingent liabilities? A. I paid $375,000 plus $125,000 of my own money that was in the company, so that actually made it an investment of $500,000.

Q. And taking your figures, Mr. Klein, you had a corporation that was worth $1.1 million? A. That's correct.

Q. That was the price upon which the Canadians and yourself agreed, is that correct? A. That's correct.

The Court: Let me ask you a question.

Did you buy that $1.1 million or three-quarters of it?

The Witness: I bought three-quarters of it.

The Court: You said you paid $375,000 plus your $125,000 for assets of $1.1 million, but I want to know, one-quarter of those assets belonged to you?

The Witness: In the first instance, yes, sir.

The Court: All right.

[7682] Q. As a matter of fact, by January 20th, to get back to the point at which I was, the Canadians had noth-

ing more to say in Tivoli, is that correct? A. As owners, no, they did not.

Q. You were in complete control of that? A. That's right.

Q. While I am waiting for an exhibit, Mr. Klein, you said your share of the Harwood deal was the $4.7 million that you took out in checks, was it not? A. If that is the total in checks, yes.

Q. Plus the $375,000 which was deducted from your total share of approximately $5.1 million in payment of Tivoli, isn't that correct? A. I am not sure about those figures, Mr. Bauman. You are probably speaking from records you have in front of you, and I am not sure whether that is correct or not.

Q. You did not write a check for the payment of Tivoli, did you? A. No, I did not.

Q. Your total share in the Harwood deal was computed, is that right? A. That's correct.

[7683] Q. $375,000 was deducted, is that right? A. I think so, yes.

Q. And the balance you received in checks? A. In checks.

Q. When you filed your income tax return for 1947, Mr. Klein, you did not report that your income was $5.1 million, you reported that your income was $4.7 million; isn't that right? A. I believe that is correct.

Q. In other words, the $375,000 for which you got Tivoli was not shown as income to you in that 1947 return, is that right? A. You are asking me whether it doesn't show as income. You must remember, sir, in making a return of that kind I am not making it up. There are the

accountants who are making it up and the attorneys. I assumed when they made it up they knew why.

Q. You read the return before you signed it, didn't you? A. Mr. Bauman, when you read an income tax return prepared by an accountant——

Q. I beg your pardon. I am just asking did you read the 1947 return that you signed before you signed it. A. If you are asking me if I read every figure [7684] and decimal point, if I read every figure and decimal point on that return, my answer must be in all honesty, no.

Q. Did you read that part of the return which said how much you had made from the shares—— A. I did not.

Q. —in the Harwood situation? A. The only thing I read in that return was the rider attached to that return.

Q. The only thing you read on your 1947 return was the rider, is that correct? A. That's correct.

Q. Beyond that you did not look at any of the figures on the return; is that right? A. Was there any reason for me to look?

Q. Just answer the question. A. I will try to. No, I didn't.

Q. Do you know in fact your share of the Harwood venture was $5.1 million rather than $4.7 million?

> Mr. Bender: Might I object at this time to this line of questioning, as to whether or not Mr. Klein left something off his 1947 return or not. The charge in the fifth count has no alleged claim of income tax evasion. That has already been adjudicated [7685] in the first four counts. This line is wholly immaterial and improper in this fifth count.

The Court: Sustained. I won't permit any more of it.

Q. I show you Government's Exhibit 269, and ask you if you recognize that draft.

The Court: Is the printing too small?

The Witness: Are your glasses stronger than mine, your Honor?

The Court: My glasses aren't good enough to read that thing.

The jury is excused until Monday at 2.15.

Will counsel wait, please.

(The jury retires.)

The Court: I expect to have the exhibits owed to me by the defendant Klein and by the Government by Monday.

With respect to the moving process to Room 1306, I still do not know what time the laborers will be here on Monday morning to move all the stuff over to that room. I do want a representative of the Government here and I want a representative from at least one of the defendants to see what is going on [7686] when those cabinets are moved and so forth. I don't want to put the responsibility solely on the clerk to take care of that. I would like to have representation on each side.

Mr. Bender: Mr. Meagher has agreed to accept that post.

The Court: I cannot tell you what time that will be, Mr. Meagher, because Mr. Anderson has

to find out from the Clerk when the laborers will be available.

Is there anything? I hope not.

Mr. Kiendl: A very short one.

We have arranged to have four character witnesses appear here on Monday at two o'clock. They came from Baltimore, Maryland. I requested Mr. Bauman to consent to withdraw the witness from cross-examination and permit me to call the character witnesses. Mr. Bauman refused to.

The Court: I will not compel him to, not on the crucial matter of cross-examination. I don't think he should have the continuity broken if he does not willingly assume to do so. Under those circumstances the obligation is yours to tell your witnesses not to [7687] come on Monday because obviously Mr. Bauman will not be finished by Monday night. We then skirt this danger, when Mr. Bauman is finished, we may have an hiatus, because I am not going to impose on you to bring those people here and have them sitting around the courtroom. That will be Mr. Bauman's problem.

Mr. Bauman: I will attempt to inform Mr. Kiendl when I anticipate closing my cross-examination.

The Court: Very well.

Monday at 2.15.

(Adjourned to August 1, 1955 at 2.15 o'clock p. m.)

Hyman Harvey Klein—By Defendant—Cross

[7688] New York, August 1, 1955
2.15 o'clock a.m.

Trial resumed.

(Jury in box.)

HYMAN HARVEY KLEIN resumed.

Cross Examination Continued by Mr. Bauman:

Q. Mr. Klein, originally you entered into a contract with Duncan Harwood. You, Hyman Harvey Klein, entered into a contract with Duncan Harwood, is that correct? A. That's right, sir.

Q. And that contract was dated January the 1st, 1944, is that right? A. I don't remember the date, Mr. Bauman.

Q. Well, let me show you something that may refresh your recollection.

Mr. Bauman: Where is the original of those things?

(Produced.)

Q. Do you recognize your signature on this page, [7689] Mr. Klein? A. Yes, I do.

Q. Will you look at the first answer, please, and see whether that refreshes your recollection as to the date of the contract between Hyman Harvey Klein and Duncan Harwood? A. This refers to, I believe, the Agencias——

Q. Does it refresh your recollection, sir? A. No, it does not.

Q. Was there such a contract? A. Yes, there was.

Q. Does that first answer on that page or that first writing on that page refer to the contract between Hyman Harvey Klein and Duncan Harwood; does it? A. I don't believe it does, no.

Q. I see.

May I have that for a moment, Mr. Klein? A. Yes, sir.

Q. There was a contract between you and Duncan Harwood dated January 1st, 1944, was there not? A. There was an earlier contract, Mr. Bauman.

Q. Yes, and was there a contract between you and Duncan Harwood dated January 1st, 1944? [7690] A. I don't recall that, sir.

Q. Yes.

Was such a contract executed about March of 1944? A. No. That contract was executed with Agencias, sir.

Q. Now, with relation to your Exhibit BG, that is a contract between Agencias Destiladores and Duncan Harwood, is that right? A. Yes, sir.

Q. And what is the date of that contract? A. February 1944.

Q. And that was executed, was it not, on or about May the 8th, 1944 after the Williams agreement with Agencias had been signed, isn't that correct? A. Do you mind my reading this, Mr. Bauman?

Q. Not a bit. Let me correct that, and let me withdraw that question, Mr. Klein.

That contract which you presently hold before you was forwarded by Agencias on May the 8th to Duncan Harwood which executed that contract on May the 22nd, is that right?

A. I will have to see this. I don't see a date of execution here.

[7691] Q. Well, did you submit to the revenue service an affidavit dated November 3, 1951, in which you said the following:

> "I learned shortly thereafter that on the same day"—referring to the previous sentence, May 8th—"a new direct contract between Agencies and Duncan Harwood was prepared in Havana incorporating the essential terms of the earlier agreement but providing for a ten-year term and that Agencies forwarded this contract on May 8th to Duncan Harwood in Vancouver, which executed it there on May 22, 1944."

Did you make such a statement to the revenue service? A. Would you let me see that?

Q. Surely (handing to witness). A. Is this with respect to their refusal——

Q. All I asked was this: Was that contract executed in May 1944? A. If this affidavit carries my signature——

Q. Look at the last page. A. If this affidavit carries my signature, sir, then I would say it is correct.

Q. Does it carry your signature? A. Yes, it does.

[7692] Q. Was it sworn to before a notary public? A. Yes.

Q. So there is no question about that, is that right? A. I wouldn't say so, sir.

Q. Having gone through that and having looked at these interrogatories with which I previously asked you to refresh your recollection, I ask you whether or not the

agreement between Hyman Harvey Klein and Duncan Harwood, dated January 1, 1944, was executed in March 1944? A. My answer to you is I don't recall that.

Q. You have no recollection of that? A. No.

Q. Having before you that statement signed and sworn to by you, is that right? A. If it so states and I signed this.

Q. You have read it. Look at the last page and tell me if you signed it? A. I signed it after I gave it to my then attorney.

Q. And those were in response to the interrogatories given to you by the internal service, is that correct? A. That is not quite correct.

[7693] Q. Let me ask you: your attorneys prepared those answers before you gave them the information which appears therein? A. Mr. Bauman, there was probably——

Q. Will you answer the question, please.

Mr. Kiendl: Let him finish.

Q. Answer the question. A. I cannot answer it the way you are asking. Do your best.

Mr. Bauman: Read the question to the witness.

(Question read.)

A. My attorneys had at least fifteen meetings.

Q. Did you give them the information that appears in that answer?

Mr. Kiendl: May he be permitted to answer, your Honor?

The Court: Yes.

A. Messrs. McGuigan and Kilcullen, who were my then attorneys, had at least fifteen different meetings with Mr. Rosenberg in which they prepared these interrogatories. Then there were two meetings with myself. Subsequently there were further meetings with Mr. Rosenberg and McGuigan and Kilcullen, resulting in my signing these interrogatories predicated on a settlement [7694] discussion which was then coming on with the United States Government, sir, and had nothing to do with my giving a statement to the Bureau of Internal Revenue for any other purpose.

Q. And you did give it to them for that purpose, is that right? A. Yes, I would say so.

Q. There is no question about that, is there? A. None whatever.

Q. And you signed that and you swore to it, isn't that correct? A. Yes.

Q. Before you signed those and swore to them, you read them, did you not? A. Yes

Q. You wouldn't swear to anything in these interrogatories that isn't so, would you, Mr. Klein? A. I would hardly think so.

Q. Don't you know? A. Positively.

Q. So it was the fact then, was it not, that the contract between Hyman Harvey Klein and Duncan Harwood, dated January 1, 1944, was executed about March 1944; is that right? [7695] A. If it so state, that must be correct.

Q. You have read it. Would you like to read it again? A. No, I wouldn't.

Q. Is it a fact or is it not? A. If it so states, it must be.

Q. Does it so state? A. It so states, but that formalizes an agreement that was made in August 1943, sir.

Q. I didn't ask you that, sir.

Mr. Bauman: I move to strike that. There was no question before the witness and I move to strike the answer.

The Court: Denied.

Q. Did you on the 20th of November, 1948, Mr. Klein, submit an affidavit or cause to be submitted an affidavit to the revenue service which stated that "the Harwood-Agencias contract and the Agencias-Williams contract could properly have contained specific geographical locations. They did not. Williams was left on its own except for the limit of the New York sales. Natural enough when national distribution was desired and when New York was Williams' previous area of operation"? [7696] A. Yes, sir.

Q. You just testified here on Thursday, did you not, Mr. Klein, that Williams was not on its own so far as allocations, that the allocations came from the distillery in Vancouver; is that not the fact? A. Sir——

Q. Did you so testify the other day? A. I did, sir, but that does not refer to allocations, sir. That is an entirely different subject.

[7697] Q. When it talks about specific geographic allocations, when it talks about the limit on the New York area sales, that is a different subject, sir, than the subject of allocations? A. Entirely, sir.

Q. I see. Now on December the 30th, 1944——

By the Court:

Q. Excuse me just a minute. That there be no residue of confusion, wasn't there a provision in the contract that

of all the liquor that R. C. Williams purchased a certain percentage had to be distributed nationwide—I think it was 75 per cent; the other 25 per cent, 12½ per cent in the metropolitan area—— A. In New York City, that's correct, sir.

Q. That had nothing to do with how much each dealer was to get. A. None whatever.

Q. That had to do with seeing how the stuff was distributed nationwide, that everybody got a crack at the limitations of Harwood available? A. That's correct; right, sir.

The Court: All right, proceed.

[7698] *By Mr. Bauman:*

Q. Now with relation to that, Mr. Klein, that was the only restriction that was in the contract, right? A. It was.

Q. And when you were talking about allocations the other day coming from Vancouver—— A. Yes, sir.

Q. —you were talking about allocations for places other than that area referred to in the contract, is that right?

The Witness: Just repeat that question.

(Question read.)

A. I don't understand the question, sir.

Q. You remember the other day on Thursday I asked you specifically about allocations in connection with Harwood; is that right, Mr. Klein? A. Yes, I do.

Q. And you told me that those allocations came from Vancouver, were received by you in your office in Baltimore, that you made relatively minor changes in them and sent them up to Williams, is that right? A. That's correct, sir.

Q. And those allocations which came from Vancouver were the allocations of Harwood whiskey, [7699] right? A. That's correct, sir.

Q. And they refer to places other than New York City and the New York metropolitan area, is that right? A. I don't recall that, sir.

Q. Well, let me show you 10-A to D.

Do you see a list of the allocations for the various states of the union? A. Yes, sir.

Q. So that those allocations which you received from the distillery covered places other than the New York metropolitan area referred to in the contract, is that right? A. No. There is an allocation here for New York State of 17,250 cases.

Q. But there are also allocations for Alaska, Arizona, Arkansas, California, Colorado, Connecticut and so on, are there not? A. Yes——

Q. Are there not? A. There are, but you also asked me if they did not include other states, excluding New York.

Q. Well, you understand that those allocations are national allocations, right? [7700] A. That's right.

Q. And these were the allocations about which you testified the other day, is that correct? A. That's correct.

Q. And when you told the Revenue Service that Williams was left on its own except for the limit of the New York area sales you knew, did you not, as you have testified here on Thursday, that Williams was not left on its own because they were bound by these allocations from the distillery, isn't that right? A. Now, wait a minute, sir. Give me the——

Q. Is it correct, Mr. Klein, or isn't it? A. No. I can't give an answer, Mr. Bauman, unless I am able to look at that and see what——

Q. You may look at anything you want, sir. Would you like to see the affidavit? A. I would like to see as to what date that refers to, sir, because, don't forget, you must——

Q. No, no, please. I am not asking anything. Just answer my questions. A. Do you mind my reading a page forward before I read that page?

Q. No, read the whole thing, Mr. Klein, if [7701] you want. A. I don't want to take the time to read it all.

The Court: You take as much time as you need, Mr. Klein.

The Witness: Thank you, sir.

Would you read that question, please?

(Question read.)

A. I see no mention here, sir, as to the date it was left on its own.

The Court: Well, now, look, I think we are getting far afield, and I am going to put my oar in.

In order to avoid any confusion, I think I will set forth to the jury from proof now before us what I understand about these allocations.

It is all very simple and any attempt here, to paraphrase the fifth count, to throw sand in the jury's and Court's eyes about the allocation business is entirely fruitless.

Government's 4 has a very distinct provision in it. There is no mystery about it at all. I will read it to you. It is the tenth paragraph of the main agreement, and its says simply this:

"It is understood and agreed"—now, this is [7702] the agreement between Agencias and R. C. Williams, the one that was dated the 18th of April, 1944, the main agreement, and it says simply this:

"It is understood and agreed that the agent (that is R. C. Williams) is to purchase and receive a minimum of 12½ per cent of all the Harwood's brand as aforesaid shipped into the United States, such minimum of 12½ per cent to be sold and distributed by the agent to its retail customers in metropolitan New York City. An additional quantity of a minimum of 12½ per cent is to be sold and distributed to wholesalers in the State of New York, other than the agent, and the balance of 75 per cent is to be sold and distributed to wholesalers and monopoly states in the remainder of the territory herein before set forth, the State of New York excepted."

There is nothing complicated about that. Of the 100 per cent of Harwood's that R. C. Williams got, they were to sell 12½ per cent in New York City, 12½ per cent in the balance of the State of New York, and the remaining 75 per cent outside [7703] the State of New York, in the United States.

Now about the other phase of the allocations. There is nothing complicated about that either. I don't know what all this to-do is about, because in the supplemental agreement, Government's 5, there is this clause in paragraph 2:

"The agent will make no sales to wholesalers or monopoly states without first having received written approval of the supplier."

That is all there is to it. The 100 per cent was to go 75 per cent outside of New York State, 12 1/2 per cent in New York City, the other 12 1/2 per cent in the balance of New York State, but no matter where it went and to whom it went, no sales were to be made to wholesalers without the approval of the supplier; that is all.

Now go to your next subject.

Mr. Bauman: I except to your Honor's remarks.

By Mr. Bauman:

Q. On or about December the 30th, 1944, you drew a check on the account of John Dunbar to Morris Alprin for $37,500, is that right? [7704] A. December 30th, 1944?

Q. Yes. A. Yes, sir.

Q. What was that for, Mr. Klein? A. That was a fee.

Q. And what was the nature of the services rendered, were they in connection with the Harwood whiskey deal? A. Yes, sir.

Q. I notice that on that same day you gave Irving Koerner a check for $37,500. A. Yes, sir.

Q. What was that for, Mr. Klein? A. That was an advance, sir.

Q. So that the total of these two checks, then, was $75,000, is that right? A. That is correct, sir.

Q. $37,000 to Morris Alprin as a legal fee in connection with his services in the Harwood deal, is that right? A. That's right, sir.

Q. And $37,500 on that same date to Irving Koerner as an advance, is that right? A. I think that is what it was, an advance, sir, yes.

[7705] Q. Yes. Did Irving Koerner ask you for the advance? A. I am sure he did, sir.

Q. And do you remember his asking you for it? A. Well, he wouldn't have gotten it if he hadn't asked for it.

Q. Do you remember his asking you for it? A. Directly, no, I don't sir.

Q. Did Irving Koerner at that time tell you that he didn't want Jules Jacobs to know about it? A. I don't recall, sir.

The Court: What was the answer?

(Answer read.)

The Court: Speak up, please, so that everybody can hear you.

The Witness: Thank you.

By Mr. Bauman:

Q. Now that $37,500 that Morris Alprin got on that particular occasion, Mr. Klein, included his services up to the end of the year 1944? A. I don't recall, Mr. Bauman.

Q. What is your best recollection, sir? A. I don't have one, sir.

Q. The check is dated December 31st. Would [7706] that indicate to you that the services for that period involved, say, about March of 1944 to the end of that year? A. That would be purely an assumption on my part, sir.

Q. You have no recollection at all as to what period that $37,500 covered, is that right? A. No, sir, I do not.

[7707] Q. And you would agree that it certainly did not cover anything beyond December 31, 1944, would you not? A. I wouldn't even agree to that, I don't recall it.

Q. It might have carried over into the year 1945, is that right? A. It could have covered the year 1944, it could have covered part of the year 1945. I don't recall the transactions.

Q. Did you receive a bill from Morris Alprin for that $37,500? A. I would think so.

Q. Did the bill specify to your recollection, Mr. Klein, what period that check of $37,500 covered? A. I don't recall, sir.

Q. You testified, I believe, Mr. Klein, that any conversation with relation to Morris Alprin receiving 60 cents a case from R. C. Williams did not take place in your presence, is that right? A. Did I so state, sir?

Q. Yes. A. That's right.

Q. You did not know anything about that at the [7708] time of the signing of the contract, is that correct? A. That is correct.

Q. Did Morris Alprin tell you that he was negotiating or had negotiated for a fee of 60 cents a case on Harwood's sold in the metropolitan area? A. He may have, I don't know.

Q. I know he may have, Mr. Klein, but I would like you to tell me whether you remember or don't remember. A. I do not remember, sir.

Q. When for the first time did you find out that Morris Alprin was receiving 60 cents a case on sales of Harwood's in the New York City metropolitan area? A. I don't know, sir, whether I ever heard the figure until this courtroom.

Q. When did you find out that Morris Alprin was receiving anything by way of compensation from R. C. Williams based on the total amount of Harwood whiskey sold? A. I heard he received it as a fee for his legal services.

Q. Where did you hear it? A. Right in this courtroom.

Q. You did not know? [7709] A. No.

Q. You did not know until this trial that Morris Alprin was receiving anything from R. C. Williams? A. I don't believe I did, no, sir.

Q. And that came as a surprise to you, isn't that right? A. No, it didn't come as a surprise, because I may have heard it before.

Q. But you say you have no recollection of having heard it before? A. No, I have no recollection.

Q. Your best recollection is that you heard it for the first time in this courtroom, is that correct? A. That is correct.

Q. Do you remember—withdrawn. During May, 1945, Mr. Klein, didn't Morris Alprin give to you or your partnership, Kirby and Kirby, $2,000 of the fees which he had been receiving from R. C. Williams? A. What date is that?

Q. During the month of May, 1945.

Mr. Donohue: May I say my impression was that that matter was stricken from the record.

The Court: What exhibit was that?

[7710] Mr. Bauman: May I approach the bench?

The Court: No. Answer my question first.

Mr. Bauman: The exhibit was stricken.

The Court: Are you objecting?

Mr. Donohue: Yes, your Honor.

The Court: Sustained.

Q. I take it, Mr. Klein, that you at no time mentioned to anybody at Williams, Mr. Jaburg, Mr. Jacobs or any of Mr. Koerner's superiors at Williams, that you had advanced Koerner $37,500, is that right? A. No, sir.

Q. By the way, did Koerner ever repay that to you? A. No, sir.

Q. Did you ever tell Mr. Jaburg or Mr. Jacobs or any of Mr. Koerner's superiors in R. C. Williams, that you had made an agreement or a promise to him to pay him a bonus of a certain amount per case on the total amount of Harwood's sold? A. No, sir, I don't believe so.

Q. Did you ever tell anybody at R. C. Williams that you gave Koerner $264,000? A. No, sir.

Q. With relation to the Tivoli stock subscrip- [7711] tion, Mr. Klein, I think you have told us on direct examination that you obtained checks from the various subscribers to the shares of Tivoli and by that I mean Roer, Alprin, Koerner, Rosenberg and that group, in September and October, 1945, did you not? A That was my best recollection.

Q. Those checks were deposited on November 20, 1945, is that right? A. I don't recall the date, but whatever these dates are.

Q. After you had received those checks, and after the checks had been deposited, did you tell Rokoff to make out those stock certificates? A. No, sir.

Q. When did you tell Rokoff to make out those stock certificates? A. I never told him at any time. There is no testimony that I told Rokoff to make these out.

Q. Did you ever tell Rokoff to make them out? A. No, I did not.

Q. Those stock certificates are dated when? A. November 26, 1945.

Q. When did you discuss with Mr. Rosenberg—withdrawn. That was, of course, after the checks [7712] in payment of these subscriptions had been deposited, isn't that right? A. I think I said, when I discussed it with them, when he brought these back for signature, that I may have discussed it with him previously, I don't recall.

Q. But your testimony in this trial, Mr. Klein, that you discussed it with Ellis Rosenberg—it is your testimony that you discussed it with Ellis Rosenberg when he brought those certificates to you for signature, is that right? A. That I may have discussed with him before, too, I think I said.

Q. Did you not say that on the occasion when Ellis Rosenberg brought those certificates to you that you entered into a discussion in which he told you that if you permitted these people to subscribe they could look at the books, and there was a man by the name of Gilbert who used to make trouble in stockholders' suits? A. Very well.

Q. That is the only conversation you told us about in this courtroom until now, is that right, about the issuance of these stock certificates? A. I think I said there may have been one before, but I didn't recollect.

[7713] Q. Yes. A. That's correct.

Q. That conversation which I have just refreshed your recollection about occurred on the occasion of his bringing those certificates to you, isn't that right? A. That is correct.

Q. And that would indicate to you, would it not, Mr. Klein, that that conversation took place on or after November 27, 1945? A. On or after November 26.

Q. 1945, is that right? A. That's right.

Q. Your certificate of stock in this corporation, Exhibit EW, for 2,850 shares is dated December 31, 1945, is that right (handing to witness)? A. That is correct.

Q. I show you Government's Exhibit 380, which is the book of Tivoli, the journal of Tivoli, more particularly to an entry dated November 20, 1945, is that right? See that? A. Yes, sir.

Q. That shows, does it not, that $2,850 was received based upon a stock subscription by you, is that right? [7714] A. Yes, sir.

Q. That was on November 20, Mr. Klein, six days before you had this conversation with Ellis Rosenberg in which Ellis Rosenberg told you not to issue stock to these people, is that right? A. Up to that point you are correct, but wait a minute.

Q. Would you look through Government's Exhibit 380, please? A. What is 380?

Q. This journal of Tivoli. A. I do not have to have you show me, I don't know anything about those books.

Q. Would you look through the journal, please, and tell me if there is any reflection or indication or entry in that book showing at any time that Roer, Alprin, Koerner, Lechtzier, Rokoff, Rosenberg and so forth subscribed to

any stock? A. Sir, I have already testified that they got their refunds and that the stock was therefore issued to me and I in effect bought their subscriptions.

Q. And no entry of their subscription was ever made in the books of Tivoli? A. I can't tell you what the entries in the books [7715] of Tivoli were, I am not a bookkeeper. I explained that the other day. I know nothing about books. I never kept a book in my life or made an entry in a book.

Q. When Mr. Rokoff received those checks, you told him, did you not, with the exception of his own, that they constituted a subscription to the stock of the Tivoli Company, is that right? A. Yes, when he originally got the checks, he knew what they were for.

Q. As the check came in you gave it to Mr. Rokoff? A. To keep, yes.

Q. Did you tell him to keep it? A. I am sure I did.

Q. You told him to hold that check until all the checks were accumulated? A. I would think so.

Q. Then you told him to deposit the checks, is that right? A. I think there was another deposit to be made the same day.

Q. Did you tell him to deposit the checks for the subscription of Tivoli stock? A. I don't recall that, sir.

[7716] Q. Then he in fact did deposit the money for the subscription of Tivoli stock, did he not? A. What date, Mr. Bauman?

Q. On November 20, 1945, Mr. Klein. A. You want an answer from me?

Q. Yes.

(Question read.)

A. Whether he deposited it or Mr. Rosenberg——

Q. But you knew it was going to be deposited at that time? A. I didn't know whether it was going to be deposited that day or the next.

Q. Either that day or the next day? A. Yes. The bank records would reflect when the deposit was made.

Q. Were you in court, Mr. Klein, when Mr. Rokoff took the stand and said, and correct me if I am wrong, that he must have written—let me withdraw that.

Was that book of Tivoli rewritten in Canada, Mr. Klein? A. Yes.

Q. Was that pursuant to your direction? A. No.

Q. It was with your knowledge? [7717] A. Yes, sir.

Q The complete book was rewritten, is that right? A. Copied, not rewritten. There is a difference.

Q. Yes. That book was copied from the first page to the last, isn't that right? A. To the best of my knowledge it would be, yes, sir.

Q. Was that done upon your instructions? A. No, sir.

Q. It was done with your approval? A. With my knowledge.

Q. With your knowledge and approval? A. I would say so, yes.

Q. Who copied the book? A. Rokoff, I would say.

Q. Was Ellis Rosenberg with him when he copied it? A. He wasn't there, no. He was in and out probably while he was doing it.

Q. Were you there when Rokoff was copying the book? A. No, sir, I was not.

Q. You just told me that Rosenberg was in and out when Rokoff was copying the book. A. I said he was probably in and out.

[7718] Q. Do you know whether he was in and out? A. No, I don't, that is an assumption on my part.

Q. You knew the books had been bought in Canada, didn't you? A. Oh, yes.

Q. You knew the book was going to be copied, Mr. Klein, is that right? A. No, that is not correct.

Q. It is not correct? A. No, it is not.

Q. That book, the Tivoli book, makes no reference at all to the acceptance of checks and the deposit of checks for subscriptions by these various individuals whom I have named, and you know the names, I will repeat them if you like, it makes no reference or no entry to the fact that $2850 or $2800 I think that was the amount, was deposited, which was received in payment for their subscriptions to the stock of Tivoli, is that correct? A. I can't answer the question the way you want me to, Mr. Bauman.

Q. I don't know why you can't. Will you please answer the question as best you can, but answer the question that I have asked you. [7719] A. If you ask me does this book make a reference to the $2850 by these various former subscribers to the stock, my answer is no, because the subscription was not accepted.

Q. The subscription was not accepted? A. It was cancelled. They cancelled their subscription.

Q. You cancelled their subscription. A. They signed it, they cancelled the subscription.

Q. I believe you stated, Mr. Klein, that you held the stock of Tivoli Trading Company for the beneficial interest of your Canadian associates, is that right? A. Twenty-five per cent each, yes, sir.

Q. Twenty-five per cent each? A. Yes.

Q. They owned 25 per cent each of Tivoli from the beginning, isn't that right? A. That is correct.

Q. Actually, what were your expenses of incorporating Tivoli, Mr. Klein, you individually? A. I don't know.

Q. You have previously said, have you not, that your expenses were $713? A. I don't remember saying anything like that.

[7720] Q. Did you and the Canadians each pay $713 for the incorporation of Tivoli? A. I don't recall, sir.

Q. You do not recall? A. No.

Q. When this corporation was organized in 1945, Mr. Klein, it was agreed right then and there as of that moment you- Canadian associates held equal interest in the corporation with you, is that right? A. Well, no, that is an assumption on your part.

Q. Tell me what the fact is? A. The fact is that there was no discussion about Tivoli at all. The company was formed at that precise time with no idea as to what that particular company was going to do until it was really activated.

Q. You testified the other day, did you not, that you held the 2850 shares of Tivoli stock for their beneficial interest, is that right? A. Seventy-five per cent of it, yes, sir.

[7721] Q. And that was precisely what you refused to do in the case of Agencias Destiladores, isn't that correct? A. What do you mean by that, sir?

Q. I say, when the certificates of Agencias were signed, Mr. Klein, by Dr. Moran, they were originally signed two for one share each in the name of Ellis Rosen-

berg and two for five shares in your name, is that right? A. That's right.

Q. As president of Agencias you refused to sign those certificates since they did not represent the beneficial interest in Agencias, is that right? A. That's right.

Q. You returned them to the secretary with instructions to issue four new certificates, each for three shares in the name of yourself and your three Canadian associates, is that correct? A. Right.

Q. You did not, however, object to holding the shares of Tivoli completely in your name as you did in the case of Agencias, is that right? A. No, I didn't.

Q. Now, when these various gentlemen, Mr. Roer, [7722] Mr. Koerner, Mr. Alprin, who subscribed to the stock of Tivoli, subscribed, you obtained a check from them, is that correct? A. That's right, sir.

Q. And when you canceled their subscription, or they canceled their subscription, you obtained a receipt from them, is that right? A. Yes.

Q. Now you did collect $713 apiece, did you not, Mr. Klein, from your Canadian associates in connection with Tivoli; did you not? A. Undoubtedly. I don't recall.

Q. Did they pay you that by check? A. I don't recall, sir.

Q. Did you give them a receipt? A. I don't even recall that, although I hardly think it would be necessary.

Q. Your answer is you don't recall, Mr. Klein? A. That's correct.

Q. I show you your Exhibit DY, Mr. Klein. Each one of those is a receipt calling for the cancelation of a

subscription to certain Tivoli stock, is that right? A. That's correct, sir.

[7723] Q. Can you tell me, please, when it was that you obtained them? A. No, I can't, sir. It was some time between the cancelation of stock that Mr. Rosenberg brought in, which was——

Q. November 20th—no. November 20th is the date of those certificates, Mr. Klein. A. You have got to go beyond that.

Q. Well, you tell me, sir, when to the best of your recollection those cancelation receipts or whatever you want to call them were obtained by you from the individuals who signed them? A. Well, I would say some time after that date to any time within 30 or 60 days, sir. I wouldn't know.

Q. So that that would have been any time in December 1945 or January 1946, is that right? A. Whatever it is; I don't recall exactly, sir.

Q. And those receipts are undated, is that correct? A. Yes, sir.

Q. And you at the time you obtained those receipts did not ask for the person who got the money to date the receipt, did you? Did you, Mr. Klein? [7724] A. I don't have any recollection of having asked him to date it, no.

Q. Now, those receipts are half of a sheet of paper, is that right? A. Half of a monarch size sheet.

Q. What was on the other half, Mr. Klein? A. There was no other half, Mr. Bauman.

Q. Do I understand, Mr. Klein, that when those were prepared several monarch size sheets were taken and cut in half? A. You are asking me to assume what the man who typed them did with them, sir, and I wouldn't be able to tell you that.

Q. You didn't know about that? A. As to what?

Q. As to what the man who prepared these receipts did with them, is that right? A. In other words, you are asking me did I know whether he took a scissors and cut the sheet in half first so he would have exactly half a sheet in order to type that receipt?

Q. I am asking you, sir, were you with Mr. Rokoff at the time he typed these receipts? A. No, sir, I was not. Mr. Rosenberg [7725] instructed Mr. Rokoff and dictated that particular phraseology.

Q. And it is your testimony, is it not, that there was never anything typed above these receipts, is that correct? A. That is positive, sir.

Q. Can you tell me whether Mr. Rokoff——

Mr. Bauman: Withdrawn

Q. You observed Mr. Rokoff around your office, didn't you, Mr. Klein? A. Yes, sir.

Q. And you observed him perform his duties around your office from time to time? A. Yes, I have.

Q. Was that a fairly usual thing for Mr. Rokoff to do, to cut sheets of paper up because he was going to type on half a sheet? A. It was not an unusual practice to type out little notes for himself, sir, and stick them on his desk or in his calendar, pin them up on his calendar, so he would remember what he was doing.

Q. I understand. You didn't have any short paper, did you, Mr. Klein? A. Mr. Bauman, my personal stationery, second [7726] sheets, are monarch size.

Q. No, I am not asking you about your personal stationery. A. Mr. Bauman, if you want an answer you have got to permit me to answer.

Q. Go ahead and answer, Mr. Klein. A. My office, the stationery of H. Harvey has second sheets which are monarch size; so is the first sheet. I don't see anything unusual about the fact that he took the sheet and cut it in half and typed the receipt.

Q. I only asked you, didn't you have small pads or sheets of paper in your office? A. I don't know that, sir.

Q. All right. That is the answer to my question, Mr. Klein.

You repaid these so-called subscriptions in cash, is that right? A. Yes, I did.

Q. Tell me why it was you didn't use a check, Mr. Klein? A. I wish I had, Mr. Bauman.

Q. But you didn't, is that right? A. No, I didn't.

[7727] Q. And you don't know why you didn't? A. No, sir, but I wish I had.

Q. Yes. When did you hear about the formation of the corporations by Mr. Alprin, Mr. Roer and Mr. Koerner for the first time? A. I think I testified in this very court-room that some time in June of '40——

Q. That is when you first heard about the formation of the corporations, Mr. Klein. A. Either I heard they were going to form them or they had formed them or something.

Q. What is your best recollection, sir? A. Some time around that period, sir.

Q. And what did you hear at that time? A. That, from Mr. Rosenberg I believe I heard that they were down there forming corporations.

Q. Was this after they had formed the corporations or before? A. That I don't recall, sir.

Q. Mr. Rosenberg was there at the time they were forming the corporations, isn't that right? A. Either he arrived there the same time or arrived there a day or two afterwards.

Q. He was there while these corporations were [7728] being formed, is that right? A. I think he was.

Q. And didn't you substantially testify that Mr. Rosenberg had told you that he was there when these corporations were being formed? A. I think I did, sir.

Q. And did he tell you that each of these three men had formed four corporations? A. No, sir, he had not.

Q. He told you that they had formed several corporations, is that right? A. I believe that is what he said. I don't even recall that definitely, sir.

Q. Did you not just this moment say, "I believe that is what he said"? A. I said—"And that is not definite, sir."

Q. And that is not definite? A. No, sir.

Q. Well, what is your best recollection of what he told you about the formation of these corporations by these individuals, Roer, Koerner and Alprin? A. I would have to say, sir, I don't recollect.

Q. You have no recollection about it? A. Other than what I have already testified to.

[7729] Q. And what is that; please repeat it for me once more. A. That I heard they had formed some corporations.

Q. And that is all you remember about the conversation, is that right? A. It assumed no importance to me, sir.

Q. Is that all you remember about the conversation? A. That is all I remember about it, sir.

Q. When for the first time did you learn the names of these corporations? A. I never learned the names of them; only the names that those checks are made out to, sir.

Q. Did Rosenberg give you a list of the 12 corporations that had been formed by these people in Cuba? A. No, he did not, sir.

Q. And did you ever get such a list of the 12 corporations which they had formed? A. No, I did not, sir.

Q. Did you ever mention to any of them the formation of these 12 corporations before you gave them the drafts for 264,000 and 272,000, respectively?

[7730] The Witness: Just a moment. I didn't hear the first part of your question.

(Question read as follows:

"Q. Did you ever mention to any of them the formation of these 12 corporations before——")

A. Are you asking me did I ask them to form the corporations?

Q. No, I didn't ask you that. A. Then I don't understand the question, sir.

Q. Mr. Klein, you knew, did you not, that Rosenberg, Alprin, Koerner and Roer were going to be in Cuba together at about this period, June of 19—— A. No, I did not, sir. You are assuming——

Q. Just a moment. Please, will you?

I am asking you, Mr. Klein, you did know, did you not, that Rosenberg, Roer, Alprin and Koerner were going to Cuba together in June of 1946? A. No, I did not, sir.

Q. And the first thing you knew about that was when Rosenberg came back to you and told you about it in your office in Baltimore, is that right? A. No, I think I said before that they may have told me they were going to Cuba.

Q. I know they may have, but what is your [7731] recollection, sir? A. I don't have any recollection, sir.

Q. You don't remember anything about it? A. No, I do not, sir.

Q. All right. Well, there came a time, Mr. Klein, did there not, when you found out that Albert Roer had incorporated a firm called La Ribera? A. Yes, sir.

Q. When did you learn that? A. I don't recall, sir.

Q. What is your best recollection, Mr. Klein? A. Well, my best recollection would have to be when I issued a check to Mr. Haas.

Q. And that was in—on February 24th, 1947? A. That's correct, sir, some time in February when he got a check.

Q. Did you tell Roer to turn over that corporation? A. I don't recall, sir, I may have.

Q. You may indeed have told Mr. Roer "To give Haas one of your corporations," is that right? A. Well, I couldn't just instruct him, give him one of his corporations; that is an exaggeration.

Q. You may have said to Mr. Roer, may you not, [7732] according to your answer as I understand it—— A. That's correct, sir.

Q. —"Give Haas one of your corporations"? A. I may have.

Q. Yes. You did, didn't you, Mr. Klein? A. No. Wait a minute, Mr. Bauman; there is a difference between——

Q. Well, did you? I am asking. A. I don't recall. I say I may have.

Q. You don't remember, Mr. Klein; you don't remember whether or not you asked Albert Roer to give Maurice Haas one of Albert Roer's corporations in February of 1947, is that right, sir? A. No, I do not recall it, sir.

Q. And that was the day that you gave Mr. Haas a check for $35,000; is that right? A. That was the date it was issued, yes.

Q. Well, when did you give it to him? A. That was the date of the—let me see the draft, sir.

Q. I show you Government's Exhibit 340 and call your attention to a draft dated February 24, 1947. A. Well, it would probably be around that period.

[7733] Mr. Bender: Your Honor, I think that it is a check as distinguished from a bank draft.

Mr. Bauman: I beg your pardon: you are right, it is a check.

The Witness: Yes, it is a check, sir.

Mr. Bender: A slight difference.

Q. Mr. Klein, you said the other day——

Mr. Bauman: Let me withdraw that.

Q. I know we went into this the other day, but I should like you to refresh my recollection, if you would, about when it was that you first met Mr. Haas. A. We are back to the point where I told Mr. Victory or Mr. McCarthy at the time that I thought I met him first in the fall of 1945.

Q. But then you talked with Mr. Haas and I believe you said you now felt that it was some time in 1946, isn't that right? A. That is correct, sir.

Q. And that was, was it not, in connection with the computation of the consolidated balance sheet which resulted in the figure being arrived at which you were paid out of the Harwood deal? A. No, because I said the fall of '46——

[7734] Q. In the fall of '46. A. Now, if—if his recollection is—if Mr. Haas' recollection is I met him——

Q. No, please. I don't know what Mr. Haas' recollection is, but I am asking for your recollection. A. Well, I must say, Mr. Bauman, I don't have one, because I said 1945. It has been called to my attention he didn't meet me until 1946.

Q. And your best recollection, then, is, would you say, some time in about the early fall of '46? A. I don't know. I would have to say one or the other is right. I just don't recall it, sir.

Q. How many times did you see Mr. Haas during the year 1946, Mr. Klein? A. I don't recall, sir. I don't think I saw him very often at all, as a matter of fact.

Q. Now—— A. Until after——

Q. Up until the point which I believe you testified—and correct me if I am wrong, Mr. Klein—was either in the last part of December, up to about January—December 1946 up through about January 15, 1947, when you saw Mr. Haas with relation to the preparation of the consolidated balance sheet—[7735] do you remember that? A. Did I say he prepared it during that period.

Q. No. I am suggesting, sir—I am asking you, did you say that you saw him during that period with relation to the trial balances and balance sheets which I showed you the other day, Government's Exhibit 381, as I remember

it—38—— A. Whatever they are, I know what you are talking about.

Q. 371. A. Oh, I saw him during that period, yes.

Q. Yes, and that was some time between December 15th and January 15th, 1946? A. Could be any time in there, sir; I don't recall.

Q. Now, except for that period, Mr. Klein——

The Court: Excuse me. Were you referring to the trial balances that were prepared by Rokoff or the consolidated balance sheet when you said 371? I just want to know.

Mr. Bauman: No, I made a mistake.

The Court: I want the record to be straight.

[7736] 371 is the consolidated that Haas prepared; 381 was the series that Rokoff prepared.

Mr. Bauman: That is the one. 381 is the one I meant when I talked about the trial balances, and 371 I shall refer to as the consolidated balance sheet hereafter.

The Court: All right.

We will take a fifteen minute recess.

(The jury left the courtroom.)

(Short recess.)

[7737] *By Mr. Bauman:*

Q. I believe I was inquiring, Mr. Klein, about the number of times before you and Mr. Haas started to talk about the consolidated balance sheets, Government's Exhibit 371. I will show them to you so you will know what I am talking about (handing to witness).

How many times had you seen Haas before you started to talk to him about the preparation of Government's Exhibit 371? A. I don't have any recollection.

Q. It was very few, I believe, is that right? A. I would think so, yes.

Q. You didn't know him before he rendered the opinion of 1944 personally, did you? A. No, sir.

Q. You did not know him personally before he rendered the opinion of 1945, did you? A. No, sir.

Q. If you did see him before you spoke with him in reference to Government's Exhibit 371, it was informally and not with relation to your business, is that right? A. That is correct.

Q. I believe you stated, Mr. Klein, that on [7738] or about February 24, 1947, at Mr. Haas' request, you gave him this $35,000 as a loan? A. Yes.

Q. Is that correct? A. Yes.

Q. And that you did not expect to—you did not expect repayment of this loan, is that right? A. That's correct.

Q. You did not ask him for any evidence of any debt, did you, a note or anything like that? A. No, sir.

Q. You just gave him a check for $35,000? A. Bear in mind, Mr. Bauman——

Q. Is that right? A. That's correct. But bear in mind he did some work for me in my selling out.

Q. Yes. You gave him the $35,000 in a check and that was the only paper that passed between you in relation to the $35,000, is that right? A. That's correct.

Q. There was no question in your mind at that time or in Mr. Haas' mind that that was a loan, is that right? A. I don't recall, sir, what was in Mr. Haas' [7739] mind.

Q. You can tell me about your own. A. That's right. In my mind the giving of $35,000, I certainly did not expect any repayment of it.

Q. It was a loan which you say you did not expect to have repaid, is that right? A. That's right.

Q. When did you first meet Ellis Rosenberg, Mr. Klein? A. A long time before we sold the United Distillers of America, Limited.

Q. And you sold that in 1945? A. That's right, June, 1945.

Q. You knew Mr. Rosenberg in the 1930s, did you not? A. Sometime, late 1930s probably.

Q. During this period I believe you testified that he maintained an office with you in Baltimore, is that right? A. Not in United Distillers of America, Ltd.

Q. In the other one? A. In the H. Harvey Company.

Q. You and he had worked very closely together over the years? A. What do you mean by closely?

[7740] Q. He had been one of your employees for many years? A. Yes.

Q. You knew him very well, is that right? A. I would say so.

Q. You trusted him, of course, isn't that right? A. With any amount.

Q. And this $35,000 which you loaned to Mr. Haas was not entered in the loan account of Tivoli Trading, was it? A. No, sir.

Mr. Bender: I object to that question. While practically the testimony might indicate there was a loan to Haas, I mean the direct testimony is it was

a loan to La Ribera and not to Haas specifically. I just say that to straighten the record out.

The Court: The loan to La Ribera was not entered as a loan in the Tivoli book?

The Witness: No, sir, we did not expect any repayment.

The Court: Strike everything after "No, sir."

Q. It was entered on February 24, or on date of February 24 as follows: "Accrued commissions and expenses payable," that was the debit, and "Cash, Royal [7741] Bank, Montreal, $35,000"? A. If you say so, sir.

Q. I will show it to you, Mr. Klein, and the notation indicates "Paid commissions to Compania Commercial La Ribera S. A., Havana, Cuba," would you like to look at that? A. If that is what it says, I am assuming it is correct.

Q. I will show it to you (handing to witness). A. Yes, that is what it says.

The Court: I assume the document is part of the exhibit.

Mr. Bauman: Yes, your Honor. I have taken the liberty of removing that page.

The Court: Let the record show what exhibit it is.

Mr. Bauman: One of the pages from Government's Exhibit 380.

The Court: I just want the record to show what the exhibit is.

Mr. Bauman: Yes, sir.

Q. So that the entry in Government's Exhibit 380, the books of Tivoli, does not reflect a loan to La Ribera or Mr. Haas, it reflects the payments of commissions [7742] to a Cuban corporation, Havana, Cuba, is that correct? A. That is correct. But in effect——

Q. Was that entry made pursuant to your direction Mr. Klein? A. The entry should show paid as expenses.

Q. I asked if it was made pursuant to your direction? A. I don't recall whether it was or not. It was charged off.

Q. Mr. Rokoff came to you, did he not, and asked you who was La Ribera? A. Undoubtedly, sir.

Q. "How are we going to handle this $35,000 check?" A. I told him to write it off.

Q. Is that correct? A. Yes, sir.

Q. And you told him as commissions, Mr. Klein? A. I don't have any such recollection.

Q. You did have on the books of Tivoli Trading Corporation, Government's Exhibit 380, a loans receivable account, did you not? A. One for Ellis Rosenberg for $15,000, yes, sir.

Q. And that one to Ellis Rosenberg was in March [7743] of 1946, is that right? A. Yes, in connection with this purchase of a house.

Q. The loan to Ellis Rosenberg on the books of Tivoli as a loan for $35,000, about which we are now talking, appears on those books as commissions payable to Compania Commerciale? A. It would be carried on the books. Why he put it as commissions, I don't know.

Q. When you made that loan to Ellis Rosenberg, that loan was covered by a demand note bearing interest at 2-½

per cent per annum, is that right? A. I believe that is correct.

Q. But to Mr. Haas you did not feel you needed a note, is that correct? A. Again, sir, if you don't expect repayment of something, why take a note.

Q. Mr. Rosenberg had been employed by you for years, was he not? A. That was carrying out of formalities.

Q. Mr. Rosenberg had been employed by you for years? A. That's correct.

Q. And as you then saw it, he was going to continue [7744] to be employed by you, was he not? A. If he hadn't passed away he would still be.

Q. And he passed away in 1954, is that correct? A. That is correct.

Q. And he was employed by you until 1954? A. He was, yes, sir.

Q. And you anticipated, did you not, in the case of Ellis Rosenberg, just as you did in the case of Mr. Haas, that Ellis Rosenberg was going to work off the $15,000 that you had loaned him, didn't you? A. No, no, that was a different thing entirely.

Q. Did Haas ever offer to re-pay the $35,000, Mr. Klein? A. I have no recollection that he did.

Q. You do not remember whether he did or not? A. No, I don't. The last——

Q. Your answer is you don't? A. I have no recollection that he did, sir.

Q. Would you say, Mr. Klein, that you have a normally good memory? A. I would say I have an average memory.

Q. Do you remember being interrogated on this subject by the revenue service on November 26, 1954, Mr. Klein? [7745] A. Vaguely, yes, sir.

Q. Were you asked this question and did you make this answer, page 5323 of the minutes—— A. Are you referring——

Q. Wait until I ask the question. A. I am sorry.

Q. "Q. Why was payment made to this Compania Commerciale S.A. La Ribera? A. I don't know whether it was a payment or a loan or what it was. If it was charged to expenses, obviously, frankly, at this time I don't know. See, in the light of this here, as it now appears, you asked me a question when going back in dealing in a foreign country, who is going to ask questions as," and then Mr. McCarthy asked you another question.

Now, in 1952, was it your recollection that you did not know whether it was a payment or a loan or what it was when you answered that question to the revenue service? A. Mr. Bauman, when I was called up to the revenue service to answer the interrogatories at that time, it was in relation to a settlement of my tax affairs with the Government. Now I was presumed to be answering questions of my own affairs, not the affairs of [7745a] someone else. Consequently, when he started going into matters unrelated to my taxes, I just didn't recall, I wasn't in a position to recall. I heard many things in the courtroom since April 4th of this year that I completely forgot.

[7746] Q. Have you explained all that you want to about that? A. No——

Q. Is there anything further you want to say about that? A. No, I have nothing further to say.

Q. So your memory is better now than it was two years ago, is that right, because you have been thinking about it? A. On many subjects that I heard in this courtroom.

Q. And this is one of them? A. That is correct, sir.

Q. Mr. Klein, you remember, do you not, in December 1946——

Mr. Bauman: Let me withdraw that.

Q. You remember in October 1946, Mr. Klein, when Mr. Brewster came to see you at your office in Baltimore? A. No, I do not have any such recollection, sir.

Q. You don't remember Mr. Brewster ever being there, is that right? A. No, I do not, sir.

Q. You don't remember Mr. Brewster asking for [7747] the books of these various enterprises at that time? A. No, I do not recall——

Mr. Kiendl: That is objected to.

The Court: Sustained, stricken out, and the jury is instructed that the entire Brewster testimony was stricken out and Mr. Bauman had no right to cross-examine on that score.

Mr. Bauman: Will your Honor give me a moment, please?

The Court: Yes, but keep them above the belt, and you may note an exception to that remark.

Mr. Bauman: I do, sir.

The Court: Very well; we are in perfect agreement.

Q. Mr. Klein, between August 30, 1946 and October the 1st, 1946, you transferred or caused to be transferred

from the United States to Canada money and securities totaling $15,332,035.17, did you not?

The Witness: Would you repeat that question?

(Question read.)

A. If you will show me the record, Mr. Bauman, I will agree with you, and then I want to point some- |7748| thing out, sir.

Q. No, please. I didn't ask you to point anything else out. A. All right.

Q. I am asking you did you transfer that amount of money? A. I don't recall, sir.

Q. Well, let me ask you this, Mr. Klein:

There was transferred to Canada pursuant to your request on September 16, $8,000,000—this is 1946—$8,347,000—— A. What date?

Mr. Kiendl: May I object to that question; it assumes the date was September 16th, and the letter is dated September the 12th.

Mr. Bauman: This is cross-examination.

Mr. Kiendl: The letter is dated September 12th.

The Court: The cross-examiner is required not to deliberately misstate the facts.

Mr. Bauman: But I am not, sir.

Mr. Kiendl: September the 12th.

By the Court:

Q. Mr. Klein, while it may have been that the bank actually made the transfer on the 16th of September

[7749] your letter requesting the transfer was dated September the 12th? A. That is correct, sir.

Q. And when I say the transfer, I am referring to the series of letters in the various accounts. A. That's correct, three of them.

The Court: Now Mr. Bauman's question is technically correct, in that the transfers were made on September 16th, and they were made at your request.

However, he neglected to state that your request was at least four days, if not more than four days, before the 16th.

Now on that basis, will you reframe your question?

Mr. Bauman: Answer the question.

The Court: Eight million-odd dollars was transferred.

The Witness: Pursuant to my letter of September 12th.

The Court: All right.

By Mr. Bauman:

Q. Now, pursuant to your instructions or pursuant to checks or drafts or various other documents, Mr. Klein, the Royal Bank of Canada on August [7750] the 30th, 1946, had transferred $1,775,000 out, is that right? A. Well, you say that—you are asking me if that is right, sir, and I say I don't know unless you show me the bank record.

Q. What is your recollection, sir, as to the amount of money that was transferred out of this country to Canada pursuant to your direction? A. I have no recollection other——

Q. From September the 12th or any other date in September, from September the 1st through October the 1st, 1946? A. I have no recollection other than that eight million some odd dollars that was referred to last week in the three letters that I wrote to the Royal Bank dated September the 12th, sir.

Q. And I ask you, Mr. Klein, between August the 30th, starting on that date, and concluding on October the 1st, 1946, did the Royal Bank of Canada transfer securities and money totaling $15,332,035.17 out of this country? A. $8,000,000 I am sure of. Now if you will show me the bank——

Q. What is your recollection as to the balance, [7751] Mr. Klein? A. I don't have any recollection.

Q. You have no recollection at all? A. Not about the 7 million, no, sir.

Q. None at all? A. None whatever.

Mr. Bauman: May we approach the bench for a moment, your Honor?

The Court: Surely.

(Discussion at the bench off the record and not recorded.)

(The following discussion at the bench was reported as follows.)

The Court: Now, will you state on the record just what you were going to ask, Mr. Bauman?

Mr. Bauman: Your Honor, I do not wish to transgress on the Court's rulings or the spirit of them or the letter of them by asking questions in relation to the following:

1. I intend to ask this witness, if it does not transgress those rulings, whether the defendant Alprin told him in August of 1946 that OPA investigators were investigating the Harwood transaction and their investigators were then at R. C. Williams, and to pursue that line of inquiry [7752] by asking whether that did not in fact create in his mind an apprehension that the Internal Revenue Service would shortly follow that——

The Court: And supposing he says it did not create such an apprehension; where do you go from there?

Mr. Bauman: Well, it is his right to answer that way if it is the fact, your Honor, but I don't want to get involved in this area if I am going to step over the bound.

Mr. Kiendl: We would certainly object to it, your Honor.

Mr. Donohue: I hope there is some basis for the question as stated that Mr. Bauman has evidence by which he could otherwise prove that Mr. Alprin ever made such a statement to Mr. Klein. In the light of the fact that if the OPA investigators were actually in R. C. Williams & Company it would appear to me that the report to Mr. Klein would have come from them, not from Alprin. Maybe he has some such proof.

Mr. Bender: There is another vice to the question. The question suggests to the jury that such a fact may exist when it does not exist at all.

[7753] Mr. Bauman: Wait a moment. That is always true, and I will be happy to tell the Court what basis I have if the Court requires it, but the point is that any time you ask a question, Mr. Bender, the jury may think whatever they like about the question, but his answers, being tested by the process of cross-examination, is of the essence——

The Court: Well, the thing boils itself down to this: The only remote basis on which it might be admitted—and, of course, there are so many dubious phases; i. e., Alprin telling him thus and so—but assuming all of that, the only basis, remote basis on which it might be admitted would be that he, by virtue of that fact, was inducted to write the letter of September the 12th, and I think it is too remote.

As a matter of fact, if I were to allow it—and I feel on reflection that if the defendants move for a mistrial on the basis of my having allowed it, I am inclined to think that I might grant it. So, of course, they state here now that they would object if you framed the question, but the damage might already be done. As a matter of fact, the [7754] question, itself—and you are to be commended for having come up and exposed your hand before actually asking the question—the question asked and remaining unanswered might be even worse than if the answer came through.

Mr. Bauman: Of course I don't propose to ask it if you are against it, but I do think that going to his knowledge—your Honor, the Government's position is that this man started to move his money out, that he started to move——

The Court: So far as we know he moved out that $8,000,000 on September the 12th. Now, I don't have any recollection of the August 30th, 1946 $1,775,000. I don't think there is anything in the record on that.

Mr. Bauman: I think the checks and things are in the bank records, Judge.

The Court: The point that confounds me is this:

Where is this addressed to any of his direct testimony, anything other than the removal of September 12th? The only basis upon which it would be admissible as cross-examination would be to try and give an explanation of tax fear as the [7755] inducement for the letters of September 12th, and I say that the mere fact that somebody told him that the OPA was checking on R. C. Williams is just as remote as my very indelicate cop who came up because he spat on the sidewalk, and I would not admit it and, of course, if the question were framed and you certainly showed very commendable caution in coming up first, if the question were framed, an objection was made and sustained, the damage might be so great that I might have been disposed under those circumstances, if the defendants were so inclined, to have granted a motion for a mistrial if

they made it. So under the circumstances I am advising you that if you ask the question, if the defendants are disposed to object, and the objection will be sustained—but in addition to that, that if they are disposed to move for a mistrial, I might seriously consider—I am not saying that I would, but I might seriously consider granting such a motion on the basis that the unanswered question initiated by you would have created a highly prejudicial frame of mind in the jury, more so by virtue of the fact that it remained unanswered.

[7756] Mr. Bauman: May I just say one thing, your Honor, while we are on this subject? And that is, so far as the propriety of my inquiring into this matter is concerned, it is abundantly clear to the jury, and I know your Honor will take care of that in the charge—I will expect that—that somebody from the OPA came around to the Royal Bank of Canada looking into the bank records of this defendant.

The Court: I don't know anything of the kind. All I know is that somebody came to the Royal Bank of Canada with a subpoena addressed to certain corporations which was dated the 16th of September, served on the 18th of September, and I also know that Holohan's testimony, apparently, was all confused when he said that the letter was received pursuant to a request for written instructions confirming oral instructions that he got when he spoke with Klein over the telephone about the subpoena, when according to his own records the letter was

dated four days before the subpoena was drawn and six days before it was served on Holohan. So I say the only basis of admissibility for this proof that you say that you would want to offer would [7757] be that it induced the letter of September the 12th, and I say that then opens the door not to drawing of reasonable inferences, but to drawing of the highest and most dangerous type of inflammatory speculation, and I won't admit it.

Now, of course, I add to that, as I have said before, that if you framed the question and the defendants objected, and I sustained their objection, I might be sorely put, if they were disposed to move for——

Mr. Bauman: Your Honor has indicated you are going to sustain the objection, so there is no point in my asking the question.

The Court: Wait a minute, Mr. Bauman. I want to make one thing crystal clear to you, that you would have a perfect right, even on my indication of having sustained the objection, to ask the question as an advocate. The defendants would object. I would sustain their objection. But I say that the unanswered question would be so highly prejudicial in my mind that if the defendants or any of them were moved, were prompted to move for a mistrial, I would think about it, and if I were persuaded that the unanswered question did that much violence [7758] to the defendants' rights, even at this eleventh hour and fifty-ninth minute of this trial, I might grant a mistrial if they ask for it.

Mr. Bauman: Your Honor is fair enough to advise me. I have no intention of asking the question.

The Court: You see, you have a perfect right

Mr. Bauman, you have a perfect right to ask any question even though I indicate to you what my ruling will be, but I am going one step further and say that if you exercise that right, you are skirting a situation that I have outlined; that is all; and I feel it is my obligation to tell you, that merely saying I would sustain the objection is not sufficient. I am telling you further than that that in addition to sustaining the objection what I might be prompted to do.

Mr. Bender: I should like to raise this question as long as we are here now, rather than interrupt.

Your Honor, I have talked this over with my colleagues, and we can hold this in abeyance and see what develops.

[7759] Thank you very much.

(The following was had in the presence of the jury.)

By Mr. Bauman:

Q. Mr. Klein, you gave Morris Alprin $264,000, is that right, roughly? A. Yes, sir.

In answer to your counsel's question yesterday, or on Thursday——

The Court: May I interrupt to ask one question, Mr. Bauman?

My own recollection is a little bit hazy on it. You may be able to help me out.

Notwithstanding the import of your immediately preceding questions, the truth is that in the record there is only proof of the transfer of the 8 million-odd dollars pursuant to the letters of September 12th; that is correct, isn't it?

Mr. Bauman: I think I had better reply to your Honor——

The Court: Will you, please? I want to know, because if I am correct in that recollection, and if there is no proof of any transfer of any additional amounts, I don't want the jury to go out [7760] with the notion that additional amounts were transferred.

Mr. Bauman: Your Honor, I must say, I must reply to you by saying that there is in the exhibits retained in evidence justification—there is additional proof beyond the $8,000,000 to which your Honor is referring. Now if your Honor would like any further enlightenment I would be happy to approach the bench and discuss it.

The Court: Yes, I should like to see it.

(Discussion at the bench:)

[7761] The Court: As a result of this conference at the bench, the Court has been straightened out in its confusion. The eight million dollars were the bonds in a safekeeping account, if you recall, of Regan Potter, Waldorf and Seaboard. Apparently in addition to those safekeeping bonds certain cash was also transferred at different times. The parties

have not as yet agreed on the dates or the amounts of cash transferred. They are going to try to work out an agreement. If they can't, we will have to go through the full examination as to each and every item. But that accounts for the confusion.

In other words, the eight million odd dollars were the safekeeping bonds. In addition to that, some cash was transferred and the parties are going to try to work out a schedule of dates and amounts, and, if they do, I will be able to give you that information in addition.

Mr. Bauman: May I continue with cross-examination along that line, your Honor?

The Court: Yes, surely.

By Mr. Bauman:

Q. Does that figure, Mr. Klein, of $15,300,000 sound like the amount that you transferred from the United States to Canada, the dates of deposits in the Canadian [7762] banks ranging from August 30, 1946—— A. If you let me see that, I cannot remember all the dates.

Q. You can't remember? A. I remember eight million dollars, because specifically I remember those letters having been brought up in this court.

Q. However, you don't remember the amount of money outside of the eight million dollars that you transferred out? A. No, unless you show me the dates.

The Court: Excuse me, just a moment.

Mr. Klein, you do remember that the eight million dollars that you speak of that came out in the trial were Canadian bonds given for safekeeping that were transferred?

The Witness: Yes, sir.

The Court: Do you remember regardless of the amount that in addition to those bonds having been transferred some cash was transferred?

The Witness: There was cash going back and forth quite a lot on various occasions, and he is trying to mention fifteen million dollars and seven million dollars anyhow, and I just don't recall the period of [7763] when it went back and forth or went up to Canada. All I know it was close to the time when these Canadians wanted the money in Canada, but I don't remember the amounts and the periods that he refers to.

By Mr. Bauman:

Q. I believe I was talking to you about the fact that Mr. Alprin got $204,000 from you, is that right? A. Yes. He got it from Tivoli Trading Company.

Q. You said the other day or you were asked this question and did you make this answer:

"Q. What had Mr. Alprin done in connection with the success of the Harwood deal? A. Mr. Alprin, being an attorney and being an expert in the liquor field, liquor regulations, particularly, in the various states of the United States where Harwood had been shipped, there was always some technicality of some kind or another which arose at one time or another, not consistently of course, but I would say he did a tremendous amount of work and did an extremely efficient job of obtaining releases, for example, in the State of California."

That was your answer, was it not, partly? A. Yes.

[7764] Q. "For example, in the State of California, which had a regulation in relation to certain type of bottles or certain stamps" et cetera,

I am not going to read the rest of your answer, but you remember it? A. Yes.

Q. And the $264,000 was a legal fee? A. I wouldn't call it that.

Q. You just told us on Thursday that he rendered legal services for which you paid him $264,000, isn't that correct? A. I don't think I did that.

Q. Every single instance that you set forth as the basis for which you gave him $264,000 was some lawyer's job, is that right? A. Not necessarily.

Q. What he did in observing the regulations of the various liquor authorities, being an expert and attorney in the liquor field, liquor regulations, particularly, in the various states where Harwood had been shipped, there was always some technicality of some kind or another which arose from one time or another, and there you were talking about Morris Alprin being an outstanding liquor lawyer, is that right? A. Just a moment, Mr. Bauman.

[7765] Q. Is that right? A. You are going to have to let me answer——

Mr. Kiendl: Let him answer the question, please.

I submit the witness is entitled to answer the question when Mr. Bauman asked him "is that right?".

The Court: Yes, I agree with you.

Is that right?

The Witness: No, it is not right, not the way the question was asked.

Q. You felt, did you not, Mr. Klein, that $264,000 was the fair value of the services that Mr. Alprin had rendered, did you not? A. Mr. Bauman, if you will permit me, sir, I must again refer to the fact that there was a prior discussion, that if a good job was done that he would receive so much per case. The result of $264,000-and-some-odd cents, whatever the figure might be, is the result of that oral understanding. I was merely expressing what was my opinion of the ability of Mr. Alprin, sir.

Q. And the only services he rendered during this time were those you outlined during your answer to Mr. Kiendl's question the other day? A. Is a lawyer supposed to be a good salesman? [5706] I am only expressing my own opinion.

Q. I said, Mr. Klein, perhaps I ought to ask you again, the services that Mr. Alprin rendered were the services of the kind you outlined on Thursday in response to Mr. Kiendl's question? A. Undoubtedly.

Q. That is what he did? A. That's right.

Q. And he wasn't a salesman, was he? A. No, he was not.

Q. He was a lawyer? A. That's correct.

Q. And you paid him $264,000 in a check made out to a Cuban corporation, is that right? A. At his request.

Q. However, you paid him what was a legal fee of a quarter of a million dollars by a check made out to a Cuban corporation, is that right? A. Mr. Bauman,——

Q. Is that right, please? A. Please, sir, your interpretation of what it is——

Q. I am asking, is that correct? A. You have now twice asked me whether there was a legal fee, and I say it was not a legal fee. I say [7767] it was subject to an oral understanding that he receive so much per case, predicated on the fact a good job was done on Harwood.

Q. You say it wasn't a legal fee, you say he rendered legal services, but it was not a legal fee? A. No, because it was based on something else entirely.

Q. He was being paid, Mr. Klein, because of these various things that he did about which you testified on direct examination, was he not, regardless of the amount? That is what he was being paid for, isn't it? A. No, he was being paid because there was an oral understanding to pay him.

Q. An oral understanding was entered into on the basis of the services that Mr. Alprin would render in making the Harwood deal a success? A. That's right.

Q. And those were the services about which you testified on Thursday, isn't that correct? A. If you say it is, yes, sir.

Q. I don't say it is, I am asking. A. That is my answer.

Q. You anticipated that Mr. Haas' accounting services would be worth the $35,000 that you loaned him [7768] not expecting to get repaid, isn't that right? A. He subsequently proved as a fact that after my jeopardy assessment he wanted a larger fee for that.

Q. For his legal and accounting services, is that right? A. That's right.

Q. And so when the time came to pay him or to anticipate his payment of $35,000, you made his check payable to a Cuban corporation for his services as an accountant and a lawyer, is that right? A. No, sir, you are not correct.

Q. That is all that Mr. Haas ever did for you, isn't it, Mr. Klein? A. Yes.

Q. He rendered legal and accounting services, is that right? A. That's right.

Q. And you knew that that is what he was going to do when you loaned him, so-called, $35,000 which you did not expect to get repaid, isn't that right? A. That is right.

Q. So what you were doing then really was anticipating legal and accounting fees in the amount of $35,000 which you paid by a check drawn to a Cuban cor- [7769] poration at his request, is that right? A. It was drawn to the Cuban corporation at his request.

Q. I know it was drawn to the Cuban corporation at his request, but will you please answer the entire question. A. In my own mind, yes, sir.

Mr. Bender: I object to the last statement of Mr. Bauman that he knows the check was drawn to La Ribera at Mr. Haas' request, because that is an assumption on Mr. Bauman's part, and there is no evidence in the record to actually substantiate that.

Mr. Bauman: This witness has testified to that.

The Court: Mr. Bauman's statement will be amended to the fact that he knows that this witness claims that that happened.

Q. Didn't you say in your cross-examination within the last fifteen minutes——

The Court: Just a moment. Yes, he did. Mr. Bender is merely referring to the fact that Mr. Haas has another version and who originated the idea. That is all Mr. Bender is concerned about.

Mr. Bauman: All right.

[7770] Q. Do you remember when you were questioned by Mr. Victory and Mr. McCarthy? A. I remember I was questioned by them, yes, sir.

Q. Do you remember being asked these questions by Mr. Victory and making these answers, Mr. Klein:

"Did you tell Mr. Alprin what this payment of $264,162.70 represented? A. I may have said to him, 'Morris, here is a bonus.' I don't recollect the exact words I might have used or how I might have phrased it.

"Q. Was it a bonus for services rendered? A. The services he rendered couldn't have been worth that kind of money."

Did you make those answers to those questions? A. Undoubtedly.

Q. So that, Mr. Klein, you had paid Morris Alprin, call it whatever you like, a total of $37,500 on December 31, 1944, which covered a period maybe a little less than the year 1944 and maybe a little more than that, is that correct? A. Possibly.

Q. In addition to that $37,500 you paid him this amount of $264,000, is that right? A. That is correct.

[7771] Q. When the time came for you to give Mr. Koerner his draft of $264,000, he still owed you that

$37,500 that we have talked about back there on December 31, 1944? A. I said I didn't remember what it was for.

Q. Did you not say, Mr. Klein, that he asked for an advance or a loan? A. He could have asked for an advance.

Q. What did he do; what were the circumstances of your giving him the $37,500 on December 31, 1944? A. I don't recall, sir.

Q. Do you remember his asking you for a loan of $37,500 at that time? A. No, I do not.

Q. You have no recollection at all? A. No, I don't.

Q. As to the sum of $37,500, is that right? A. Figures are relative. At that time we were dealing in millions.

Q. In December 1944? A. No, not in December, but subsequently.

Q. But that is when you loaned him the money? A. You are correct.

Q. You don't remember what it was for and he never [7772] paid you back, is that right? A. I don't believe he ever paid back, no.

Q. When the time came for you to give him the $204,000, did you discuss the $37,500 with him? A. I certainly didn't.

Mr. Bauman: Your Honor, I wonder if we could suspend here.

The Court: Yes. Ten-thirty tomorrow morning.

(The jury left the box.)

* * *

Hyman Harvey Klein—By Defendant—Cross

August 2, 1955, 10:30 o'clock A. M.

[7775] HYMAN HARVEY KLEIN, resumed.

Cross Examination Continued by Mr. Bauman:

Q. Mr. Klein, I want to go back a little bit to the first part of my interrogation with you, just to make one point clear. When I was asking you about the proceeds of your sell-out in the Harwood transaction and your purchase of those two million dollars' worth of certificates of indebtedness, and your retention of those two million dollars' worth of certificates of indebtedness during the years 1947 and 1948, that those [7776] were not the securities which you said had been taken by the revenue service pursuant to the jeopardy assessment. That is the fact, is it not? A. That is correct

Q. You retained those and they were not attached? A. They were not.

Q. With relation to the drafts of $204,000 and $272,000 respectively, Mr. Klein, I believe you stated on direct examination that Mr. Koerner spoke to you on several times about the fact that he could not obtain his draft from Mr. Alprin, is that right? A. That's correct.

Q. How many times would you say he spoke to you about that? A. I wouldn't hazard a guess, but it was many times.

Q. Many times? A. Yes.

Q. Can you tell me in substance what he said to you and what you said to him on those occasions? A. Only to the effect that he couldn't get his check from Mr. Alprin, and the reason he couldn't get it because Mr. Alprin wouldn't endorse the check to him because it was a corporate matter, and couldn't [7777] I issue an exchange

draft from Tivoli to him for that particular draft. My statement to him was that he asked the draft to be made to Alprin's company and for him to settle his differences with Alprin, because Tivoli was out of business.

Q. Did he ever tell you in any of those conversations that Mr. Alprin said to him that Mr. Alprin would not release it until you gave him permission to do so? A. I have no such recollection, sir.

Q. Did you talk to Mr. Alprin about the release of these drafts? A. No, I did not.

Q. You did talk to Mr. Alprin many times during the period that Mr. Koerner was talking with you about the release of his draft, is that correct? A. I would imagine so, sir; I don't recall.

Q. On none of these occasions you told Mr. Alprin that Koerner had said that Alprin would not release his draft; is that right? A. I don't have any recollection of even discussing it with Mr. Alprin.

Q. You never asked Alprin to release that draft to Koerner, did you? [7778] A. What authority would I have to ask him to release it?

Q. I just asked you. A. No, I did not.

Q. There came a time, did there not, when Mr. Glassgold called you in relation to the draft? A. Mr. Glassgold never spoke to me at any time in relation to the draft.

Q. Did he speak to Mr. Rosenberg? A. Not to my knowledge.

Q. You never had any conversation at all with Mr. Glassgold about the draft? A. Never.

Q. And to the best of your recollection you never spoke to Mr. Glassgold at all? A. I didn't hear you.

Q. To the best of your recollection you have never spoken to Mr. Glassgold at all? A. Oh, yes. I have spoken to him but never in relation to that draft.

Q. Was it during the period during which Mr. Alprin was holding these drafts? A. That I don't recall, sir.

Q. Was it before the year 1952? A. No, I don't believe it was.

[7779] Q. It was after 1952? A. Yes, it was.

Q. Now, you used drafts, I believe you testified on direct examination, rather than checks of Tivoli; you used bank drafts rather than checks of Tivoli because you said you wanted to close out Tivoli, is that right? A. We were cleaning up all the tag ends, yes, sir.

Q. Actually you weren't cleaning up all the tag ends, isn't that correct, because Mr. Roer's tag end was still open. A. I didn't hear you, sir.

Q. Mr. Roer's tag end was still open, wasn't it? A. Not in so far as his check was concerned, no, sir.

Q. Well, Mr. Roer, so far as his claims against Tivoli or against you, Mr. Klein, had not disposed of all of his claims, is that right? A. All of his claims as far as Tivoli is concerned, sir.

Q. That's correct, they had not been disposed of. A. In so far as Tivoli?

Q. In so far as Tivoli or H. H. Klein or any Cuban or Panamanian Corporations. [7780] A. In so far as H. H. Klein, sir, he had no claim against me, and so states to this very day.

Q. As a matter of fact, Mr. Roer does have a very substantial claim right now, does he not, which he claims arose from the Harwood transaction? A. Subsequently, sir.

Q. Yes. And that tag end was left open, is that correct? A. That tag end didn't apply, sir, when Tivoli was liquidated.

Q. Now, there was no compelling necessity that Tivoli be closed out on March the 27th, 1947, was there, Mr. Klein? A. Only that I so desired it, sir.

Q. That's correct, but there was no compelling business or other necessity that it be closed out on that day? A. Other than I wanted to start in business with a fresh name.

Q. But I say there was no necessity at that time? A. Well, I don't recall whether there was a necessity or not, sir, but the fact remains that the company paid everyone off that it owed an obligation [7781] to which was agreed to prior to my selling out, sir.

Q. And you wanted to close that company out for your own convenience, is that right? A. That's right; I wanted to start another operation entirely.

Q. And you wanted to start it under this other name of Hannes? A. With no other direct associations.

Q. Yes. Now, that was the only reason that you closed that company out on March the 27th, is that right, Mr. Klein? A. That is to the best of my recollection, yes.

Q. And, of course, you could have done that just as conveniently——

Mr. Bauman: Withdrawn.

Q. And it was in that connection—it was for that reason you say that you used bank drafts to pay the two payments of $264,000 and the one payment of $272,000, is that right? A. There were other payments at the same time, weren't there, Mr. Bauman? I don't recall.

Q. What were the other payments? A. I don't recall. I was just asking.

Q. I am limiting my questions particularly to [7782] these things, $264,000 and $272,000, respectively. A. I don't recall, but I think that is probably right, sir.

Q. Now, was that the only reason you had? A. I say I don't recall. I say you are probably right, but I don't recall, sir.

Q. Were you asked this question in your interrogation before the Revenue Service, Mr. Klein, and did you make this answer:

> "Why were bank drafts purchased instead of issuing checks of Tivoli Trading Company to La Economica Agencias and Compania Exportadora Fernandina?
>
> "A. For reasons which I have explained previously, Mr. Victory, that the OPA at that time was subpoenaing records in bank accounts in banks and the stockholders agreed with me that if we are going to do anything for these men to do it, and get rid of this. We therefore issued to—issued arrangements to have issued bank drafts for that reason."

Is that correct? A. That's correct, sir.

Q. And that was in March of 1947, is that [7783] right? A. March of '47.

Q. And the stockholders agreed with you that if you were going to do anything for these men that to do it and get rid of it, is that right? A. That's correct.

Q. And, of course, they had sold out, the stockholders had sold out their interest in Tivoli in January of 1947, isn't that correct? A. That's correct, sir.

Q. And although they were no longer stockholders or had any interest in the corporation, although you were then the sole stockholder of Tivoli, am I to understand, sir, that the Canadians were consulted at that time about your payment to Roer, Alprin and Koerner? A. It wasn't a question—Mr. Bauman, it wasn't a question of consulting. That had been agreed to long before I sold out.

Q. When you made that answer—— A. Would you please——

Q. —you weren't referring to this particular time, is that it? A. Mr. Bauman, would you please let me finish my answer?

[7784] Q. Sure, go ahead. A. And obligation had been entered into, an oral obligation, true, to pay these men so much a case bonus on the total sales of Harwood. Now, the fact they sold out didn't diminish their obligation which they had agreed with me that these men should receive.

Q. Have you finished? A. I am finished.

Mr. Kiendl: Mr. Bauman, can you give me that page number?

Mr. Bauman: 5348.

Q. Now, you agreed with the Canadians that if you were going to do anything for these men that you were going to do it and and get rid of it, is that right? A. That's right, sir.

Q. And that was pursuant to that——

Let me phrase that again. And it was pursuant to that agreement with the Canadians that you were going to do it and get rid of it that you had these drafts issued in order to do it and get rid of it, is that right? A. I don't understand

that prase. True, I used it, but you say "get rid of it." It was paying [7785] off an obligation that we had assumed, sir.

Q. When you used the phrase "get rid of it" you were talking about getting rid of the obligation, is that right? A. That's correct, sir.

Q. And so you agreed with the Canadians to do it and get rid of it, is that right? A. That's correct, sir.

Q. Although in fact at the time you agreed with the Canadians to do it and get rid of it they were no longer stockholders? A. My dear sir——

Q. Of Tivoli; is that right? I am asking. A. That is true, but you are assuming that we are strangers, that the mere fact that they sold out, that they didn't have an interest, and the fact that these men had assumed an obligation——

Mr. Klein, I am assuming that after January 20 something— A. January 20th.

Q. 20th? A. Yes, sir.

Q. When you transferred your interest in certain corporations to them and they transferred their interest in certain corporations to you, or more particularly in Tivoli Trading Corporation [7786] to you, that at that time Tivoli Trading Corporation was entirely yours; isn't that correct? A. Subject to its assets and liabilities, sir.

Q. Exactly. A. That's right.

Q. And that you testified on direct examination that when you bought that corporation you bought it undertaking a business man's risk with relation to the contingent liabilities. A. That's right, sir.

Q. So that at that time it was of no interest to the Canadians whether you settled your reimbursement ar-

rangements with these various individuals, Koerner, Alprin and Roer, for 5 cents or 5 million dollars, isn't that right; it didn't interest them? A. Well, I wouldn't say that, sir.

[7787] Q. They no longer had any ownership in the corporation? A. With the exception that was a fixed obligation.

Q. But they had no ownership left in Tivoli at that time? A. After they sold out, no, but they had a fixed obligation as far as these men were concerned to pay it.

Q. Tivoli took over that fixed obligation, did it not? A. With one exception, you are overlooking the fact that these men also were part of the oral agreement to pay these men and the mere fact——

Q. But Tivoli assumed that agreement, is that right? A. Mr. Bauman, let me finish.

Q. Would you let me finish. Answer my question. A. I will be glad to answer your question if you give me a chance to answer mine.

Q. Go ahead. A. The mere fact that they sold the company, they still had an oral and moral obligation to pay these men, which they had assumed when they were stockholders of Tivoli and agreed prior to the formation of Tivoli, I believe. The fact remains the mere fact [7788] a man sells out in a corporation still does not relieve him of the moral obligation to pay someone if he makes an agreement to pay him.

Q. Have you finished? A. I finished.

Q. Tivoli had assumed that obligation, is that correct? A. That's correct.

Q. Tivoli was in possession of more than ample funds? A. Yes, sir.

Q. To pay the obligation which he had assumed, is that right? A. That is right.

Q. Indeed, it was in possession of so much funds that you felt it was a good business man's risk to assume through Tivoli to pay these obligations, figuring you would get more out of the purchase of Tivoli for $375,000 after the repayment of these obligations than you would pay for it, isn't that right? A. I did at that time, yes. Subsequent events didn't prove I was right.

Q. That was your thought at that time? A. It was.

[7789] Q. Your purpose, then, in giving them drafts instead of checks, was to get rid of your obligation to them? A. Was to facilitate the liquidation of Tivoli, sir.

Q. Had you issued a check, Mr. Klein, that check would have been deposited by these individuals and cashed, isn't that right? A. No, sir.

Q. Did you have any reason to believe at the time that you issued these drafts to them that if you issued a check that they would hold the check for an extended period of time? A. I had no reason to believe anything of the kind.

Q. So what you expected then was, if you gave them a Tivoli check, they would immediately have deposited it or otherwise cashed it and it would have then been deducted from the account of Tivoli within a matter of days, isn't that right? A. There is only one thing you are overlooking.

Q. I haven't asked you that. A. You are right.

Q. You say you did not, Mr. Klein, get bank [7790] drafts for Roer, Alprin and Koerner because you then knew and because it was your instruction that they were to hold those bank drafts until such time as you told them that

they could deposit them or release them? A. Isn't that rather an assumption on your part?

Q. Will you answer the question. A. No, it is not true, sir.

Q. You filed your 1947 return in New York, is that right? A. That's correct.

Q. And you filed your 1947 estimate in New York, is that right? A. That is correct.

Q. You were not living in New York at that time? A. No.

Q. You did not maintain your office here at the time? A. I had started to maintain an office.

Q. You had your name on Mr. Haas' door? A. I think I quoted on direct that I intended moving my offices here to New York City.

Q. But at the time about which I am now talking, [7791] Mr. Klein, is it a fair statement to say you had your name on Mr. Haas' door and your office was in Baltimore? A. My name was on Mr. Haas' bulletin board, I should not say that, but on the Chanin Building bulletin board and I used the facilities of their offices when I was in New York City.

Q. However, your office was in Baltimore? A. My main office was in Baltimore.

Q. And your home was in Baltimore? A. At the time, yes, sir.

Q. And all your books and records and other business paraphernalia other than what might or might not have been in Cuba, were in Baltimore? A. That's correct.

Q. In connection with the selling out of your stock, Mr. Klein, Continental bought from Waldorf, bought your

interest in Waldorf for $960,003.26, is that right? A. I don't remember the exact figures.

Q. Is it correct that Continental—— A. It sounds correct.

Q. Is it correct that Continental bought your interest in Waldorf? A. I am not sure, I believe so.

[7792] Q. And Regan Potter bought your interest in Seaboard for $2,771,590.69, is that right? A. Something like that, the figures are in the book.

Q. I understand, but I would like you to answer if you can. A. You are asking me to recall who bought which, and the records are available right in this court.

Q. If you don't recall, just tell me you don't recall. A. Yes.

Q. Cameron Stuart bought your interest in Regan Potter for over $978,000, isn't that right? A. I believe it did.

Q. Upon whose instructions were the purchase and sale of your interests in these various corporations handled in that way? A. With the agreement of the Canadians.

Q. Was it your idea to sell your stock in Waldorf to Continental, sell your stock in Seaboard to Regan Potter, and to sell your share in Regan Potter to Cameron Stuart? A. I believe the charters of the companies permitted the companies to so transact business, and, [7793] that being a lawyer's function, Mr. Rosenberg in discussion with the Canadians and myself suggested this was the way it was to be handled.

Q. And it was Mr. Rosenberg's idea then, is that correct? A. I wouldn't say it was an idea.

Q. It was Mr. Rosenberg's suggestion. I don't mean to impute anything by the word "idea." A. As an attorney.

Q. He suggested to you it should be handled in this way? A. Yes.

Q. During March of 1947, and we touched on this briefly yesterday, you were in Canada with Mr. Rokoff and Mr. Rosenberg? A. And I. J. Klein.

Q. And you at that time had Mr. Rokoff bring the books of the various corporations which you had sold out in January to Canada? A. Which they wanted, yes, sir.

Q. Do you remember what books were brought up there? A. No, I don't.

Q. What did you tell Mr. Rokoff about bringing [7794] the books up? A. To bring everything up.

Q. And although in fact Tivoli had not been sold by you to the Canadians, you told him to bring that book up, too? A. I just told him to bring everything up.

Q. He brought all the books, including the books of Tivoli, is that right? A. It subsequently proved so.

Q. Do you remember seeing those books up there? A. No, I don't.

Q. Do you remember being in Mr Rokoff's hotel room on any occasion? A. I never was in that room, sir.

Q. Were any discussions held with you by Mr. Rokoff about the entries Mr. Rokoff was then making in the books in Canada? A. No, sir.

Q. You knew he was making entries in the books of these various memorandum records, so-called, in that hotel room in Canada? A. He presumed to bring them in balance with the Cuban books.

Q. You knew that is what he was supposed to be [7795] doing there? A. Yes.

What did he do with the books? Did he give them to you? A. They were turned over by Mr. Rosenberg to Mr. McLennan.

Q. Were you there at the time? A. No.

Q. You did not see the books turned over at all? A. No, I did not.

Q. Mr. Klein, were you asked this question by the revenue service in a written interrogatory, and did you make the following answer in response to that interrogatory under oath, on November 3, 1951:

> "Q. Were duplicate books of account kept on any of these corporations, and, if so, on which ones, and where were they kept?"

At least part of your answer, and I shall let you read the entire answer, you may have it before you in answering—was as follows:

> "All the books of account of the companies were maintained in the companies' office in Cuba. That [7796] was a requirement of the Cuban law, and the Cuban officers of those companies would not have tolerated any other procedure."

Is that the answer you made to the revenue service? A. If you say it is there.

Q. Would you like to look at it? A. If you say so, no doubt it is there.

(Mr. Bauman hands document to witness.)

A. Yes.

Q. The question was, "Were duplicate books of account kept on any of these corporations, and, if so, on which ones, and where were they kept?

Was that the question? A. You are reading from some interrogatories?

Q. Would you like to see them? A. I would.

Q. Would you look at No. 16, please. You did not tell the revenue service in response to that question that duplicate books or memorandum records or books of account were in fact kept for at least some of these corporations in Baltimore, did you? A. I mentioned yesterday, Mr. Bauman, those interrogatories were prepared at at least fifteen meet- [7797] ings between my then attorneys, McGuigan and Kilcullen, and with Mr. Rosenberg, and with two meetings with me. I signed the interrogatories which they had prepared.

Q. You told me you had read them before signing and swearing to them. A. I read them but I did not read the questions and answers.

Q. You just read the answers without the questions? A. To me it seemed like a logical answer.

Q. Did you read the answers and not the questions; is that what you are saying? A. I did not say that. Duplicate sets of books cannot be compared to memorandum books. I don't think Rokoff's books contained the information necessary for a complete set of books.

Q. Were you present when Mr. Rokoff testified that he sent his information with respect to these books down to Cuba via Mr. Rosenberg, and that Mr. Rosenberg brought back from Cuba those entries which involved transactions which had occurred in Cuba? Were you here then? A. I think I was.

[7798] Q. So the books in Baltimore contained the entire financial records of each individual corporation, did they not? A. Whether they did or not, I could not say.

Q. However, in any event, when the revenue service asked you were duplicate books kept, you told them that all the books of account of the companies were maintained in the companies' office in Cuba, did you not? A. Apparently, sir, memorandum books according to lawyer's language, do not constitute duplicate books, I guess, because that is the answer in there.

Q. Your answer, then, Mr. Klein, is when you made that answer to the revenue service—— A. To the best of my ability I was making a true and correct statement.

Q. When you made that answer to the revenue service, you did not regard the memorandum books, so-called, which were kept in Baltimore, as a duplicate set of books, did you? A. My attorneys didn't, so apparently I didn't.

Q. Do you remember the revenue service asking you this question in those interrogatories:

> "Where were those books kept, and where [7799] are they now located?"

Your answer was:

"All the books of account were maintained in the company's office in Cuba" without any answer as to where the books were then at the time of the interrogatories located, is that correct? A. Mr. Bauman, all I can tell you about those interrogatories is as I have explained now on two separate occasions, they were prepared in conjunction with the attorneys, properly qualified members of the New

York bar, and I can only tell you that I answered in accordance with their instructions.

Q. The answers then were the answers of your attorneys, is that correct? A. My attorneys who were able to properly answer those interrogatories, which are phrased in legal language as far as I am concerned.

Q. You realized, did you not, at the time you signed and swore to those answers to the interrogatories, that you, Hyman H. Klein, not your lawyers, but you, were swearing to the truth of those answers, is that correct? A. That is correct, and there is nothing untruthful in those answers. It is a question of interpreta- [7800] tion.

Q. Just a moment. You will be able to tell us that later, if you like. In those interrogatories, sir, were you asked these questions and did you make these answers, and I shall read interrogatory No. 52:

> "When and in what manner did you acquire the stock of Tivoli Trading Company, giving details as to the consideration paid?
>
> "Taxpayer acquired one-quarter of the stock of Tivoli on original subscriptions, paying about $713. It acquired the remaining three-quarters of the stock set out in the answer to 44."

With relation to the first part, the one-quarter, that you obtained, did you tell the revenue service that you obtained a quarter of the stock on original subscription? A. If it so states.

[7801] Q. Paying about $713? A. If it so states.

Q. Did you obtain one-quarter of the stock of Tivoli on original subscription? A. That was the original subscription, yes.

Q. Did you pay $713? A. Representing a dollar a share, yes.

Q. Did you pay that? A. Did I—what do you mean by that? I don't follow you.

Q. Did you pay somebody or something or the corporation $713 for your share of the stock of Tivoli? A. I paid $2850 to the original subscribers whose stock subscription was not accepted; therefore, if you divide $2850 by four, or $2852 by four you get $713.

Q. I am not asking that, sir. I am asking on the original subscription did you pay $713 for one-quarter of the stock of Tivoli? A. Well, it is again a question, sir, of interpretation of what you mean original subscription. My interpretation of it is that that is original subscriptions.

Q. Did you pay $713 for your interest in the [7802] original subscription to the stock of Tivoli? A. I paid $713 plus the differential between 713 and 2850, representing 25 per cent interest for three Canadians at 25 per cent each, sir.

Q. And the remaining three-quarters of 2850 you got back, you say, did you not, from the Canadians? A. Undoubtedly, sir.

Q. And did you get that money in check or by cash? A. I don't recall, sir.

Q. Was that paid to you or was it paid to the corporation? A. I don't remember that, sir.

Q. [illegible] Who were the other stockholders of Tivoli Trading Company? A. The other stockholders of Tivoli were I. J. Klein, A. L. McLennan and George W. Norgan.

You made that answer, did you not? A. No doubt.

Q. "54. How did they acquire their stock and at what date, giving details as to the consideration they paid"——

I want to read that again because I have read one word wrong.

[7803] "How did they acquire their stock and at what date, giving details as to the consideration paid."

And the answer:

> "They acquired their interest on original subscription in April 1945, each paying the same consideration that the taxpayer did."

A. That is a misstatement.

Q. That was a misstatement? A. I would say so, sir.

Q. Your answer is a misstatement? A. No. That is a misstatement. My answer is not a misstatement. That is a misstatement because there was no subscription.

Q. I don't understand, Mr. Klein. A. There was no subscription to the stock in April of 1945.

Q. Did you make that answer to the Revenue Service, Mr. Klein? A. I probably did, sir.

Q. Just take a look at interrogatory No. 54. A. Let us go back.

Yes, sir.

Q. Now, Mr. Klein, were you asked this question [7804] in those interrogatories, and did you make this answer:

> "Q. Please furnish the stock certificate book and any evidence of assignments or transfers of Tivoli Trading stock from the date of incorporation."

Did you make the following answer to that question:

"Taxpayer does not have them. He assumes that they were sent from Cuba to Canada along with the books of the other companies."

Did you make that answer? A. Undoubtedly if it is there, sir.

Q. Now, the fact of the matter is that at the time you made that answer was not the Tivoli——

Mr. Bauman: Withdrawn.

Q. You had in your possession, did you not, Klein's EU and Klein's EW? A. You said I had it in my possession?

Q. Well, they were in the possession of you or somebody in your office, weren't they? A. Not necessarily. You are assuming these were in my office.

Q. I am asking, Mr. Klein; I am not assuming; [7805] I am asking, were they in your office? A. No, they were not, sir.

Q. Where were they at the time? A. I don't recall, sir, but they certainly were not in my office.

Q. You don't recall where they were? A. They probably were in Cuba, sir.

Q. Do you know they were in Cuba? A. They either would have been in Cuba or Montreal, sir.

Q. Do you know where they were? A. No, I do not, sir.

Mr. Bauman, may I ask the date of that interrogatory?

Q. Surely. November 3rd, 1951, Mr. Klein.

And included in that group, may I call your attention to exhibits ES and ER.

Now, before I come to those exhibits, and in order to be completely fair with you, Mr. Klein, you had previously, before November 3rd, 1951, authorized your attorneys to answer these interrogatories not under oath, is that correct, and on November 3rd, 1951 you executed them, yourself, under oath, is that right? [7806] A. I don't recall that.

Q. You don't recall that? A. No.

Q. Now, with relation to those——

Mr. Kiendl: Mr. Bauman, may I interrupt a minute?

(Discussion between counsel.)

Mr. Bauman: We will get the date and we will agree with you later.

Mr. Kiendl: All right.

Mr. Bauman: Mr Kiendl asked if we could stipulate that they were first answered in 1949.

That is our information, and we shall get the date later and agree on a date, if we can.

Q. Now, at the time you made that answer, sir, with relation to the stock certificate book or any evidence of the assignments or transfers of Tivoli Trading stock from the date of the incorporation— and you said in response to that, "Taxpayer does not have them. He assumes that they were sent from Cuba to Canada along with the books of the other companies"—now, at the time you said that, in 1951, Mr. Klein, under oath—— A. Prepared in 1949.

Q. You swore to them in 1951, did you not, [7807] Mr. Klein? A. Yes, sir.

Q. At the time you swore to those answers, were you, or was your office in Baltimore in possession of those ex-

hibits on the table before you, the stock certificates of Tivoli which were in fact executed, and those drawn but canceled to the individual stockholders? A. I do not believe they were, sir.

Q. Do you know where they were, Mr. Klein? A. No, I do not.

Q. Now, Mr. Klein, were you asked these questions—and there were three of them to which you replied in one answer—were you asked these questions and did you make this answer:

> "What was the nature and amount of the funds paid over by Tivoli Trading Company to Nancy Trading, Compania Comercial La Ribera, La Economica Agencias, Compania Exportadora Fernandina?
>
> "Who were the stockholders and/or beneficial owners of these companies?
>
> "62. What was the nature and amount of funds paid over by La Economica Agencias to La Importadora Marte and El Aguila Exportadora?
>
> "63. Who were the stockholders and/or [7808] beneficial owners of these companies?"

Did you make this answer to those questions:

> "Taxpayer is not in a position to answer these four questions. He states, however, definitely and unequivocally that he did not receive one penny of these funds either directly or indirectly, nor did any member of his family receive any part thereof, nor will he or they ever receive any part thereof in the future. Neither he nor any member of his family has

any legal equitable or beneficial interest in any of the corporations mentioned in these four questions, nor did they ever have."

Is that the answer you made? A. Will you let me see that, please?

Q. Yes, sir. A. That is a four-part question. Now, do you want me to——

Q. Well, I will be happy to repeat the question to you, if you want, Mr. Klein. A. No. Will you give me the interrogatory?

Q. Yes. "What was the nature and amount of funds paid over by Tivoli Trading Company to Nancy Trading, Compania Comercial La Ribera, La Economica [7809] Agencias, Compania Exportadora Fernandina?"

That was 60.

61 was:

"Who were the stockholders and or beneficial owners of these companies?"

A. No, let's stop at each one individually.

Q. Good. I think that is a good idea, Mr. Klein.

Now, "What was the nature and amount of the funds paid over by Tivoli to Nancy Trading, Compania Comercial La Ribera, La Economica Agencias, Compania Exportadora Fernandina?" A. These interrogatories——

Q. What was your answer to that, Mr. Klein? A. "Taxpayer is not in a position to answer these four questions. He states, however, definitely and unequivocally"—well, then it goes on to explain what you just read.

Q. Mr. Klein, when you made that answer—— A. Please, Mr. Bauman.

Q. I will give you a chance in just a moment, if you will answer my question A. All right, sir.

Q. At the time you said you were not in a [7810] position to state the nature and the amount of funds paid by Tivoli to La Ribera, Economica Agencias and Fernandina, you knew perfectly well, one, the nature of the funds paid by Tivoli and two, the amount of the funds paid by Tivoli, didn't you? A. Yes, but these interrogatories were prepared in 1949. March the 3rd, 1948 I was hit with a jeopardy assessment demanding $7,000,000. Mr. Bauman, I wasn't interested in anybody's inquiry about anybody else's taxes. I was very, very much concerned about my own taxes, and I was going to answer questions till the cows came home as far as I was concerned, as long as it applied to my income taxes.

Q. And so, Mr. Klein, you deliberately lied to the Revenue Service when you said you were not in a position to give the information that you knew you well had from March 1947 and before that; you deliberately lied to the Revenue Service, is that right, Mr. Klein? A. Well, that is rather a strong word but——

Q. Isn't it the fact? A. But you must include, then, two—three members of the bar, two who are highly respected [7811] members of the New York Bar, and one who is now dead, sir.

Q. I am asking you, Mr. Klein, because you were the one who swore to these—— A. But these——

Q. Just a moment, please. Excuse me. A. I am sorry.

You then deliberately lied in your answer in that interrogatory, isn't that right? A. I wouldn't say I lied, sir.

Q. You just didn't tell the truth? A. I just didn't answer it, sir.

Q. You just didn't say "I won't answer." You said, "I am not in a position to know," didn't you? A. If——

Q. What is the answer? I don't want to mislead you. A. If I had been a lawyer, I just wouldn't have answered it. Now, we have got a three-part question there, please.

Q. Yes. I just wanted to see that page for a moment, if you don't mind. A. All right.

Q. "Taxpayer is not in a position to answer [7812] these four questions." A. That's right, sir.

Q. Who were the stockholders and/or the beneficial owners of these companies? A. I wouldn't know, sir.

Q. You weren't in a position to know? A. That's right.

Q. You didn't know that Roer was either a stockholder or a beneficial owner in Exportadora Fernandina when you answered to the Revenue Service? A. They said "stockholders and or beneficial owners."

Q. "And or beneficial owners." A. I did not know, sir; no.

Q. You didn't know that Klein—— A. No.

Q. I beg your pardon—that Roer, when he asked you to make out that check to Fernandina, had some beneficial interest in Fernandina? A. I wouldn't know that, Mr. Bauman, unless he volunteered the information to me.

Q. And when Mr. Alprin asked you to make out his check to Economica Agencias you were not in the position to know, Mr. Klein, that Alprin had some [7813] stock holding or beneficial interest in Economica Agencias? A. You asked me to assume that he owned the stock of Economica Agencias or whatever other companies are involved. How would I know that, sir?

Q. I am asking, sir. A. Well, I am telling you, sir, I do not know.

Q. Whether at the time you drew those drafts of $264,000 for Mr. Alprin to Economica Agencias and $272,000 to Fernandina, that you did not know that Alprin had a beneficial interest, at least, in Economica Agencias and Roer in Fernandina? A. That is an assumption you asked me to make, sir.

Q. I am asking what did you know about them at that time? A. Nothing other than the fact that they asked the checks be made out to those companies.

Q. And what did Koerner ask you to do? A. To make the check out to Alprin.

Mr. Bauman: Would you read that answer, please?

(Answer read.)

[7814] Q. To make the check out to Alprin? A. Alprin's company, yes.

The Court: He said to make the check out to Alprin.

Mr. Kiendl: Did he?

The Court: Yes, indeed he did.

The Witness: I am sorry, sir.

Q. No. 62:

"What was the nature and amount of funds paid over by La Economica Agencias to La Importadora Marte and El Aguila Exportadora?" A. I wouldn't know, sir.

Q "63. Who were the stockholders and/or the beneficial owners of these companies?" A. I wouldn't know, sir.

Q. And that is what you told the Revenue Service, that you were not in a position to know about—— A. These various companies.

Q. These four questions. A. That's correct, sir.

Q. Now, you were asked, Mr. Klein, on direct examination by Mr. Kiendl when you had a conversation with Roer, in the fall of 1951 and with Mr. Alprin [7815] in 1952, in March of 1952, Mr. Kiendl said at that time there was no indictment pending, is that right? A. That is correct, sir.

Q. But you then knew very well, did you not, that the Internal Revenue Service was attempting to perform its function in connection with the Tivoli situation and the Harwood situation, is that right? A. I don't know what you mean by performing its functions.

Q. You knew there was an income tax investigation going on at that time about Tivoli and about Harwood, isn't that right? A. No, sir, there was a settlement discussion going on for four years or five, Mr. Bauman, with the technical staff and with the Commissioner and I don't know who else.

Q. And with the special agents? A. Special agents were only investigating for the f urth time, I think, or third time, I don't recall, sir.

Q. Now, when did you start to share an office with Mr. Haas, Mr. Klein? [7816] A. I don't know why you say I shared an office with him.

Q. I am sorry I misused—I used the term inadvertently.

When was it that you first had your name put up on that directory in his building? A. Early part of '47, sir. I don't remember the exact date.

Q. And that was at your request, was it? A. Oh, yes.

Q. How often were you in that office of his? A. Once or twice. Once a week or if I was here for three days probably twice during the week, or if I missed a week I would be there the following week.

Q How long did that go on, Mr. Klein? A. I don't recall, Mr. Bauman.

Q. Well, what is your best recollection? A. I left here, moved to California, I believe, in '51.

Q And during that entire period from 1947 till 1951 you, in that manner, occupied Mr. Haas' office? A. I didn't occupy Mr. Haas' office at all, sir.

[7817] Q. I said in that manner. I don't mean to infer that you did— - A. I used his office.

Q. Did you use his office on the basis of once or twice a week or three or four times a week? A. Whatever office was available in the firm of Haas, Schlesinger & Mayers.

Q. In that four-year period, is that right? A. I think so.

Mr. Bauman: Now your Honor, may I approach the bench with counsel for a moment?

The Court: Yes.

The jury may have a fifteen minute recess.

(Discussion at the bench.)

[7818] Mr. Bauman: I have no further questions, your Honor.

Mr. Bender: I have a few questions, your Honor

The Court: What happened to the intervening witness?

Mr. Bender: That is correct, the character witness, I forgot.

Mr. Donohue: We arranged for our witness to come tomorrow morning at ten-thirty, our character witness, your Honor.

The Court: All right.

By Mr. Bender:

Q. Mr. Klein, I don't have to ask you if you know whom I represent. A. Yes.

Q. You know I represent Maurice Haas? A. Yes.

Q. There certainly cannot be any misunderstanding on that score, can there? A. No.

Q. You testified on both direct and cross-examination that you spent some time up at the offices of Haas, Schlesinger & Mayers? [7819] A. Yes.

Q. And I believe you testified that you did that beginning sometime in the early part of 1947? A. Yes, sir.

Q. And I think you testified further that your name was put down in the directory? A. Yes, sir.

Q. And it is clear, as a matter of fact, that your name was never put on the door leading to the actual space of Haas, Schlesinger & Mayers, is that correct? A. That's correct.

Q. And that arrangement that you worked out with Mr. Haas, was something which Mr. Haas welcomed, did he not? A. I don't know whether he welcomed it, sir, but he agreed to it.

Q. Did he express his delight? A. In a fashion.

Q. And, as a matter of fact, I think he told you that he had discussed it with his partners, Sam Mayers and

Julie Schlesinger, and they too felt delighted to have you come in and use their facilities? A. I don't recall that.

Q. As a matter of fact, you were rather grateful [7820] to have the opportunity to use space in midtown New York City, were you not? A. Space is very hard to get. We had difficulty locating proper offices.

Q. That is true. As a matter of fact you showed your gratitude, did you not, to the employees of Haas, Schlesinger & Mayers from time to time for little odds and ends that they may have done for you? A. At the appropriate holiday seasons, yes, sir.

Q. The firm of Haas, Schlesinger & Mayers was rather hopeful of obtaining your accounting business, were they not? A. Yes, sir.

Q. And, as a matter of fact, after the early part of 1947 when you visited and used the premises of Haas, Schlesinger & Mayers, they did begin to do some accounting services for you and some of your interests, did they not? A. I don't recall the exact date, Mr. Bender.

[7821] Q. But there did come a time—— A. It was some time in 1947, I am reasonably sure, but I don't remember exactly.

Q. But it was thereafter, after that period of time that you did engage their firm in a substantial amount of accounting services for you and your interests? A. Yes, yes, sir.

Q. However, with regard to any of your Cuban and Panamanian interests, substantially all of which you had liquidated, I think with the exception of Tivoli, in the early part of 1947, the firm of Haas, Schlesinger & Mayers at no

time ever audited any of those books, is that correct? A. Only the preparation of the consolidated trial balance.

Q. And that was not as a result of any audit, was it? A. No; no, no.

Q. As a matter of fact, Exhibit 371 states it to be a fact that the statement was prepared without any audit by the firm and simply on figures and information submitted by you? A. I don't recall the exact words.

[7822] Q. Would you be good enough to look at Government's Exhibit 371 and refer to the first page or the letter which accompanies that report, the letter from Haas, Schlesinger & Mayers, and refer to the first paragraph? A. Yes, it does.

Q. What does that say? A. "Dear Sir: In accordance with your request we have prepared the attached report on figures submitted by you and without audit."

Q. And that is a fact, is it not? A. That is correct.

Q. Now, as far as this report—as long as I have it in my hand, Mr. Klein, Government's Exhibit 371, the job that you asked Haas, Schlesinger & Mayers to perform was a rather limited one, was it not, in connection with this statement? A. Limited to prepare the figures only, sir, on my selling out.

Q. This was a job to compute the value of your stock interest in those corporations which you contemplated selling out, is that correct? A. I think that is correct.

Q. As far as you know, Mr. Klein, Mr. Haas, [7823] or any member of his firm, never saw any of the Cuban and Panamanian books, to your knowledge? A. No, sir, you are right.

Q. And as far as you know, and to your knowledge, Mr. Haas or any member of his firm never even inspected any of your memoranda records of your Cuban and Panamanian corporations, isn't that correct? A. That is correct.

Q. Now, at the time that these payments of $264,000 and I believe it is 274,000——

Mr. Bauman: 272.

Q. 272,000—these checks that were made payable to these corporations which Alprin, Koerner and Roer, it has been said, have an interest in, did you ever consult Mr. Haas with regard to any of those payments? A. No, sir.

Q. Was Mr. Haas ever made aware by you, or to your knowledge, by anyone at the time these checks were made payable as to the nature of these payments? A. I can only speak for myself, sir.

Q. And what is your answer? A My answer is he was never told, sir.

[7824] Q. Now, there has been some testimony that Mr. Haas did attempt to speak to you about the check made payable to, I believe, to Economica Agencias, I think it was, some time in 1948, and when I say there has been some testimony, actually that is the statement that Mr. Haas made to the Bureau of Internal Revenue. Now first let me ask you, do you recall——

Mr. Bauman: May I—I'm awfully sorry—could I have that read, Judge?

The Court: Yes. Will you read the question?

(Question read.)

Mr. Bauman: Thank you very much.

Mr. Bender: Is that all right?

Mr. Bauman: I am sorry for the interruption.

Q. Do you understand the question, or is it a little too long? A. Yes, I understand it.

Q. Now, in that statement Mr. Haas indicates that he approached you in some time around tax time, 1948, when he was preparing Mr. Alprin's 1947 tax return, and that he asked you what the nature of that check was, and what it was about. Do you [7825] recall any such conversation with Mr. Haas? A. No, I do not, sir.

Q. I believe you testified in your statement to the Bureau of Internal Revenue that you didn't have any recollection of Mr. Haas speaking to you at that time about that, is that correct? A. I don't think the Bureau of Internal Revenue—are you referring to the interrogatories by Victory and McCarthy?

Q. I may be wrong, Mr. Klein, but I thought in your statement to the Bureau of Internal Revenue—— A. That is the only statement I made, sir.

Q. In 1952? A. That would be to Victory and McCarthy.

Q. Yes; I have a recollection—I may be wrong—that you were asked about that, and you said you had no recollection of Mr. Haas speaking to you. A. I don't believe, sir, that question was ever asked of me.

Q. Was that question asked of you on your direct examination? A. I think it was, sir, yes.

Q. And I believe, then, that your answer was [7826] that you have no recollection of it? A. None whatever, sir.

Q. Would you deny that Mr. Haas did speak to you, Mr. Klein, or is it that you just don't have a recollection of it? A. Are you asking me is it probable?

Q. Yes. A. Well, anything is probable, Mr. Bender.

Q. Well, then, now, let me ask you, instead of it being probable, would you say that you just don't have a recollection of it, or would you say that you would deny that Mr. Haas ever did speak to you about that? A. I—let me put it another way, if I may.

May the 3rd, 1948, I had a jeopardy assessment placed against me for $7,000,000.

Q. I think it was in March, wasn't it? A. I mean March the 3rd, I'm sorry. You refer to a date of tax time, March the 15th, 1948, or around that period?

[7827] Q. Yes, there was no exact time specified, but I imagine it was around that time? A. I would have difficulty, sir, in saying to you that I would deny that he spoke to me, but, on the other hand, sir, it seems hardly likely that I would even have time to talk to him about anybody else's tax return other than my own, running between Root, Ballantine and my own office.

Q. To go back a minute to the payments that were made to Alprin, Koerner and Roer, it is a fact, is it not, that Mr. Haas was not present in Baltimore when these checks were turned over to these individuals? A. You are correct, sir.

Q. Mr. Klein, Mr. Haas never subscribed to any stock of the Tivoli Trading Company, did he? A. No, sir.

Q. And Mr. Haas never received any liquidating dividend or made any claim of any receipt of any liquidating dividend from the stock in Tivoli, did he? A. No, sir.

Q. It is clear, is it not, that the $35,000—I withdraw that. It is clear the Tivoli check that was turned over to Compania Comerciale La Ribera was not a liquidating dividend of Tivoli, was it? [7828] A. Certainly not.

Q. There was never any such claim made by Mr. Haas to you, was there? A. No, sir.

Q. It is also clear, is it not, that the $35,000 check that was made payable to La Ribera was not for any services rendered by Compania Comerciale La Ribera to Tivoli Trading Company, is that right? A. No, sir.

Q. La Ribera——

The Court: Just a moment. That is a double-barreled question, and I don't know what the "no, sir" means. The question was, is that right?

The Witness: La Ribera never performed any services for Tivoli.

Q. There isn't any doubt about that? A. None whatever.

Q. It is certainly clear that the check that was made payable to La Ribera for $35,000 was not for a job well done in the Harwood venture by La Ribera, was it? A. No, sir.

Q. And it is likewise clear, is it not that the $35,000 check made payable to La Ribera was not [7829] even for any services rendered by Mr. Haas in connection with the Harwood venture as a job well done? A. No, sir.

Q. As a matter of fact, Mr. Klein, there is no relationship whatsoever, is there, between the check made payable by Tivoli to La Ribera and the other checks which were made payable to Alprin, Koerner and Roer?

Mr. Bauman: Just a moment. Your Honor, I object to that question.

The Court: I will sustain the objection, but on the highly technical ground that there is no proof in here of any checks being made payable to Alprin, Koerner and Roer.

Q. As a matter of fact, there is absolutely no relationship, is there, between the check made payable by Tivoli to La Ribera and the drafts made payable to Alprin, Koerner and Roer?

Mr. Bauman: I object to that question, your Honor.

The Court: I will sustain the objection. There is certainly the relationship that they all came from the same source, Tivoli.

Q. Outside of the fact, Mr. Klein, that the La Ribera check came from Tivoli, is there any doubt that [7830] there is no relationship whatever between the check made payable by Tivoli to La Ribera and the drafts made payable to Economica Agencias and Fernandina?

Mr. Bauman: I object to that question, your Honor.

The Court: Sustained. It calls for a conclusion. I don't know what you mean by relationship.

Q. It is clear, is it not, Mr. Klein, that that $35,000 check made payable by Tivoli to La Ribera was a loan at the time it was issued? A. It is clear only to the extent that I have stated.

Q. At the time it was issued it is clear that it was a loan, is that correct? A. To the extent he had rendered some services and he would work out the balance of the loan as such and that as far as we are concerned we wrote it off immediately.

Q. I believe you testified on cross-examination that you did not intend to get that payment back, that was something in your mind, is that correct? A. That's correct.

Q. However, that does not change the fact that at least as between you and Mr. Haas, and certainly as [7831] between Tivoli and Ribera, when the check was issued, it was in fact as a loan, is that correct? A. I think that could be a fair assumption, sir.

Q. Certainly as you testified yesterday all of the services that Mr. Haas and his firm, Haas, Schlesinger & Mayers, had performed for you, was merely the preparation of Exhibit 371, which was the consolidated balance sheet and which had been prepared in the early part of January 1947, isn't that correct? A. That is correct.

Q. The two opinions which Haas, Schlesinger & Mayers had rendered to you, the one of April 17, 1944, and the one of February, 1945, both had been paid for, is that correct? A. Yes.

Q. So that actually when the check was issued by Tivoli to La Ribera in the sum of $35,000, it was not for any services that Haas, Schlesinger & Mayers had performed prior to that date, is that correct? A. What was the date?

Q. Prior to the date the check was issued to La Ribera, February, 1947. A. Only in the amount of work I referred

to previously in preparing the consolidated balance sheet, [7832] and my discussion with Haas in relation thereto.

Q. You had in 1946, I believe, retained the firm of Haas, Schlesinger & Mayers and had paid them $500 for that retainer, do you recall? A. No, I do not.

Q. While Mr. Bauman is looking for the check, which is already in evidence, I believe you just stated that the fact that you intended to get this $35,000 back in the form of some services to be rendered in the future was something you had in mind at the time that you made this loan? A. I think I so stated.

Q. You did not communicate the fact that you had that in your mind to Mr. Haas at the time? A. No, I did not.

Q. I think it is fair to state that you did not even tell Mr. Haas that you were expecting him to perform services in the future in connection with that $35,000? A. I have no recollection that I did.

Q. I believe you testified on your direct examination, and again I may be wrong, it may be in your statement to the Bureau of Internal Revenue, but in either place, that you had no recollection of Mr. Haas or any of his partners tendering the $35,000 check back to you when [7833] it was unfrozen in February 1949; do you recall that? A. Yes.

Q. Was that a fair statement of what you said, that you have no recollection of Mr. Haas ever making a tender back of that loan? A. I think that would be a fair statement.

Q. Again I have to ask you, Mr. Klein, would you deny that Mr. Haas did make such a tender back to you in 1949?

A. I would not say I would deny it, but I certainly have no recollection of it.

Q. Would it be correct to say, Mr. Klein, that you in your statement to the Bureau of Internal Revenue, wherein you indicated that you may have met or might have met, I think your words were, Mr. Haas, back in 1945, were based upon your belief that you had requested him directly to render you the second tax opinion? A. I don't recall my reason for making that statement, Mr Bender. All I can say to you is, I still at this very precise moment do not remember whether I met him in 1945 or 1946.

Q. While we are looking for this check, I would like to show you some work sheets, Mr. Klein, and ask you whether you can identify the handwriting which appears [7833a] on these three yellow work sheets (handing to witness)? A. It looks very much like Mr. Rokoff's.

Mr. Bender: May I have those marked for identification, your Honor, as one exhibit.

The Court: Surely.

(Defendant Haas' Exhibit FA marked for identification.)

[7834] Mr. Bender: We are not able to find this check, but I don't think it is too important, and I am not going to ask any more questions.

By Mr. Donohue:

Q. Mr. Klein, did I understand you to say this morning that with respect to those persons who had given checks to you for stock in the Tivoli Company that you felt you

had a fixed obligation to pay them something? A. No. It was a moral obligation and an oral obligation.

Q. Well, was it more than an oral obligation and a moral obligation; was it a legal obligation? A. No, sir, it would not be a legal obligation, but that had——

Q. When you said this morning, in answer to a question by Mr. Bauman concerning the meeting in Montreal in late March of 1947 that at that time you felt that "We had a fixed obligation to pay these men," you did not consider it to be a legal obligation? A. No. The term, the word "fixed" was in relation to my understanding with my three Canadian associates. I had nothing to do in so far as they [7835] were concerned—I mean the recipients.

Q. Do you recall that you did use the words fixed obligations? A. Quite well, sir.

Q. And may I ask you if you recall, referring to page 5323 of the stenographers' minutes, this being a reading into the record of your inquiry by Mr. McCarthy and Mr. Victory, in reading from page 5323 of the stenographers' minutes, do you recall being asked this question by Special Agent McCarthy:

> "Q. Mr. Klein, can you explain why the commissions or bonuses, whatever term you wish to choose to call them, were not paid to these individuals in the years 1945 and 1946 as shown by the entries in the books when the cash was available in the bank account of Tivoli Trading Company? A. I don't recall any particular reason why they weren't paid other than the fact that the operation

was still going on. We had no fixed obligation to pay anybody."

Do you recall that statement? A. Yes.

Q. Now, am I correct, Mr. Klein, in believing [7836] that the answers to the questions by McCarthy and Victory were some time in the fall of 1952? A. I believe that is correct.

Q. And is it a fact that since the fall of 1952, when you stated that you had no fixed obligation to make these payments, and this morning when you stated that you felt there was a fixed obligation to pay them, that Mr. Albert Roer filed a lawsuit against you—— A. That's right.

Q. —and that lawsuit was filed some time in the year 1953? A. I don't recall the year.

Q. At least it was after you had been inquired of by Mr. McCarthy and Mr. Victory? A. Oh, yes.

Q. And prior to this morning? A. Yes.

Q. And in that lawsuit Mr. Roer is claiming some $2,000,000 as an obligation which you still owe him? A. Well, it is a suit against four, my brother, McLennan, Norgan and myself, yes, sir.

Q. And in that suit, in substance, he alleges [7837] that he had a 10 per cent interest in the entire Harwood transaction? A. That is correct, sir.

Q. Is the fact that Mr. —or has the fact that Mr. Roer has filed such a suit changed your thinking or your concept of the nature of the obligation to these men as to persuade you that this morning it is a fixed obligation whereas in 1952 you considered it not a fixed obligation to make the payment? A. No; I think, Mr. Donohue, you are con-

using the word "fixed" I used this morning. I said the discussion with my Canadian associates as to having a fixed obligation to pay these men, because the operation had ended—now, we had an understanding, we were going to pay them so much per case. Now, as far as my Canadians and myself are concerned, certainly we had that fixed obligation because we had made an oral understanding to pay them; the operation had ended, and they were entitled to be compensated accordingly.

Now that is the only reason I used the word "fixed" this morning and not in relation to any legal term or phraseology other than the statement that I [7838] made to Victory-McCarthy, which is exactly now as it was then.

Q. Well, may I ask you, Mr. Klein, did you use the word "fixed" obligation this morning when you said you considered the payments a fixed obligation in the same sense as you used the word "fixed" obligation in 1952 before McCarthy and Victory when you said you had no fixed obligation? A. I just don't understand the question, Mr. Donohue.

Q. You recall using the word "fixed" obligation this morning? A. Yes, I do.

Q. And you recall using the word "fixed" obligation in 1952 in answer to—— A. I just heard that.

Q. —a question by McCarthy? A. Yes.

Q. Now did you use the two terms, the word "obligation" and the limited adjective "fixed," "fixed obligation" in the same sense this morning when you said you considered it was a fixed obligation, as you used it in 1952

before McCarthy, when you considered it was not a fixed obligation? [7839] A. I am having a little difficulty putting that together. Could I answer it this way——

Q. As best you can. A. —and satisfy your inquiry, sir, by saying to you that in so far as Roer, Alprin and Koerner are concerned, that we had no fixed obligation to pay them as such. We had an oral understanding and a moral obligation.

Now in the term I used "fixed" this morning, in discussing the matter with my Canadian stockholders, Canadian associates, between us we had a fixed obligation when we sold out to make payment of moneys to these men that we had an oral understanding to pay the fixed cents per case.

Q. But isn't it a fact, Mr. Klein, that the obligation was just as moral and just as oral in 1952 when you denied the existence of the obligation as it was this morning when you—— A. I didn't deny the obligation. I said we had no fixed obligation.

Q. Well, do you recall subsequent to the inquiry by Mr. Victory and Mr. McCarthy, and as a part of the preliminaries to the lawsuit filed against you and your Canadian associates by Mr. Roer, [7840] being asked in a deposition this question and having made this answer:

> "Q. Your discussion with Mr. Rosenberg was that the operating companies owed certain moneys for services and commissions to individuals? A. Let me stop you there. You say that it owed. It owed, and if the business continued it would continue to owe."

Do you recall making that answer to that question? A. And what was that, sir? I don't recall that, sir.

Q. Do you recall in the—— A. I mean, where did I make that statement, sir?

The Court: In a deposition in Roer's suit.

Q. In the Roer-Klein suit. A. I don't recall that exactly, sir; no, I do not.

Q. Would you deny that you made that statement? A. If it is in the record I wouldn't deny it.

Q. Now, Mr. Klein, in the period of time about which we have been inquiring for what seems like almost as long a time, between 1944 and 1947, you formed or caused to be formed a great many Panamanian [7841] and Cuban corporations, correct? A. In connection with my three Canadian associates.

Q. You and your Canadian associates. A. That's right, sir.

Q. And as I understood you, in all of those instances you and your Canadian associates were equally owners of the corporations so formed? A. That's correct, sir.

Q. And am I correct in assuming that all of the corporations were formed by Ellis Rosenberg? A. Well, when you say they were formed by him, they weren't formed, but he was the medium that went to the attorneys that we had retained in both Cuba and Panama, sir.

Q. Now, you had known Ellis Rosenberg for a long period of time? A. Yes, sir.

Q. And in these matters was Ellis Rosenberg counsel for your three Canadian associates and yourself, or was he

counsel for you and the companies which subsequently were formed? A. I would say he was counsel for me, the companies that he subsequently formed.

Q. You wouldn't say that he was counsel for your [7842] three Canadian associates? A. I don't believe so, no.

Q. Now, would you be able to estimate how many Cuban and Panamanian corporations were formed over this period of time? A. I said 14, I think, the other day, and Mr. Bauman corrected me and said it might have been 17. I don't recall, sir.

Q. Now, in no one of these instances of the formation of these Cuban and Panamanian corporations was Mr. Alprin either counsel for you or counsel for the corporations so formed? A. No, other than Agencias, in the forming of its original contract.

Q. And with respect to Agencias, you discussed the contract concerning which he was counsel for Agencias with him, I think you said, in late March or early April of 1944. A. Some time prior to the drawing of the contract, sir; I don't remember.

Q. Now, Agencias Destiladores, S. A. had been formed some time prior to your discussions concerning the R. C. Williams contract with Mr. Alprin. A. Yes, sir.

[7843] Q. And I take it that that corporation, too, was formed by Mr. Rosenberg or through Mr. Rosenberg? A. No. I believe that I wrote a letter to Dr. Moran, myself, asking him to form that company.

Q. In any event, Agencias Destiladores, S. A. was not formed by or through the intervention of Morris Alprin? A. Oh, no; oh, no.

Q. In March of 1947 you were in Montreal with Mr. Rokoff, Ellis Rosenberg, Mr. McLennan and your brother, I. J. Klein? A. That's right.

Q. At the time you were in Montreal you had disposed of all of your interests in the many Cuban and Panamanian corporations which had done business during the period from '44 to late '46, correct? A. Yes, sir.

Q. What date do you fix as the date on which you had dissolved yourself from any interest in and had wholly liquidated your interest in these Panamanian and Cuban corporations? A. That the Canadians were stockholders in, when I divested myself completely?

[7844] Q. Yes. I think the checks here show January the 20th, 19——

Q. January 20th? A. —'47.

Q. So you would say that on January 20th you had disposed of all of your interest in all of the corporations save Tivoli? A. That's correct, sir.

Q. Now, on January 20, 1947, when you had disposed of all of your interest in Tivoli on—I'm sorry, when you had disposed of all of your interest in the corporations save Tivoli, were the three Canadian associates of yours still beneficial stockholders of Tivoli on January 20, 1947? A. Well, that is splitting hairs with me, Mr. Donohue. I don't know whether the 20th or 21st.

Q. I don't do it purposely. I don't mean that at all, Mr. Klein, I think as you know.

I am simply trying to find out when in relation to the time you are satisfied that you had divested yourself of your interest in the other corporations did you feel or can you tell us that the Canadians had divested themselves of their

interest in Tivoli? [7845] A. Well, I would say shortly—probably within 24 hours after that or at the very same time, now, because the arrangement was that I would take over Tivoli and I would get so much cash; so consequently it probably was at the very same time.

Q. So that if not simultaneously, within a matter of hours, or a day or two after January 20, 1947? A. That's right.

Q. You were the actual and beneficial owner of all of the shares of stock of Tivoli for H. H. Klein? A. That's correct.

Q. And that would certainly be before the 31st of January, 1947? A. Oh, yes.

Q. Can you tell me, therefore, Mr. Klein, why it was, when you were in Montreal, the third week of March, 1947, with Mr. Rosenberg, Mr. Rokoff, that your brother and Mr. McLennan, two of your prior Canadian associates, were also in Montreal and interested in Tivoli? A. Why they were interested in Tivoli?

Q. Yes, sir. [7846] A. I didn't say they were interested in Tivoli.

Q. Well, when you said this morning—and I may be in error, and if I am don't hesitate to correct me—in answer to a question by Mr. Bauman that what interest the Canadians had in Tivoli as of March 27, 1947, that your answer was that "we" including the Canadians "had this fixed obligation to pay these funds"—— A. Yes?

Q. Am I in error? A. Oh, no, no; go ahead.

Q. I mean, did Mr. Bauman ask the question this morning concerning the Canadians' presence in Montreal on March 27, 1947, or thereabouts, and did you indicate that

they still had an interest in the payment of these obligations? A. Not as such, sir. Maybe I didn't make myself quite clear. When I was cleaning up—Mr. Bauman was asking me in relation to a check, I believe, this morning, as to why we didn't issue a corporate check instead of cashier's check and so on—you are asking in relation to why did the Canadians have an interest in the question of Tivoli [7846-A] paying these moneys to these three gentlemen you have referred to.

[7847] Q. On March 27? A. Yes, March 27. All I can say to you, sir, in that connection is this: I. J. Klein knew Morris Alprin, I don't know whether A. L. McLennan did. A. L. McLennan certainly knew Roer, because he had been in Vancouver, as well as my brother. Irving Koerner had also been in Vancouver. Now, sir, it is obvious—mind you, I have no recollection, and I won't make this with a positive assertion—that they asked me, "Have you paid off these men, this moral obligation that we had undertaken?" I said no, I was totally going to clean it up, these tag ends, because Hannes & Company had been formed and I was cleaning up all the tag ends in connection with Tivoli. That is the sum and substance of their interest in so far as the three checks are concerned.

Q. Am I correct in assuming, Mr. Klein, that your brother I. J., and Mr. McLennan, two of your Canadian associates, were in Montreal on or about the 27th of March, 1947, by reason of an interest which they held in the liquidation of Tivoli Trading? A. They were there in relation to books which had been sent from Cuba to Montreal, some forty pounds of material which had been sent there to be taken back [7848] to Vancouver, but nothing in connection with the liquidation dividend.

Q. Tivoli Trading Company was incorporated in Panama in either April or May, 1945? A. The early part of 1945, I don't remember exactly.

Q. Was that incorporation as the result of the effort of Ellis Rosenberg? A. Yes, I believe he was in Panama.

Q. He went to Panama and procured the incorporation of Tivoli Trading Company? A. No, Mr. Rosenberg made many trips to Panama, but our firm attorneys there, Fabrega, Arias Fabrega, were our firm of attorneys in Panama.

Q. Is it your recollection that in April or May, 1945, Mr. Rosenberg discussed the formation with them of Tivoli Trading Company? A. I would say so, sir.

Q. Do you know whether or not at that same time as Tivoli was formed, any other Panamanian corporations were formed? A. I don't know or recall.

Q. Mr. Rosenberg was president of Tivoli Trading Company? [7849] A. At one time I believe he was, yes.

Q. Do you know when he ceased to be president of Tivoli? A. No.

Q. He was always counsel for Tivoli, was he not? A. Let us put it this way, he was counsel for all the companies.

Q. Including Tivoli? A. I would say so.

Q. When Tivoli Trading Company was formed, was it formed as were all of the other Cuban and Panamanian corporations as a general purpose corporation? A. When you say "general purpose," what do you mean by that?

Q. It could have bought and sold whiskeys as all the others could if you so desired to use it for that purpose? A. I believe the corporate by-laws are in the record, but I don't recall exactly, I am reasonably sure you are correct.

Q. You had, as you heretofore testified, no particular

purpose in mind when you formed Tivoli, as matter of fact you did not utilize it for some time after you formed it, is that correct? [7850] A. That is correct.

Q. Assuming, and I think the record supports us, that Tivoli Trading Company was formed in April or May of 1945, may I ask you if you recall in July or August, 1945, meeting with Mr. Alprin in Vancouver? A. He was in Vancouver, as was Mr. Koerner and Mr. Roer at one time, but whether in 1945 or 1946, I don't recall.

Q. Do you recall something about visiting a new warehouse that had been constructed by your Canadian associates? A. There were several of them constructed, but as to what year they were constructed, I don't recall.

Q. Do you recall Mr. Alprin being in Vancouver and do you recall that Mr. Roer and Mr. Koerner were there at the same time? A. I think they were. I think Mr. Alprin was out there with his wife.

Q. Do you remember that Mr. Roer was there perhaps with his wife, or was she—— A. I don't recall that. I recall Mr. Alprin, because he had some trouble going back on the train, and that is the thing that stands in my mind, he told me when he got back or I got back that he had some trouble [7851] and he had to get off the train or something, and his wife was worried about him.

Q. Other than Mr. Alprin, Mr. Roer and Mr. Koerner, do you remember that Ellis Rosenberg was in Vancouver at the same time? A. That I don't remember, sir.

Q. Do you remember that Mr. Silver was in Vancouver at the same time? A. No, I don't. I wouldn't say he wasn't there, but I don't recall him as being there.

Q. Was Mr. Lechtzier there at that time? A. He lived there at that time.

Q. Was Mr. Rokoff in Vancouver at that time? A. No, he was not.

Q. Would you say that save for Mr. Rokoff, perhaps all of those persons who gave checks payable to Tivoli Trading Company were in Vancouver about the same time? A. That would be assuming that I recall that they were all there. I have no such recollection.

Q. Do you recall having read into the record by Mr. Bauman a statement made to the Bureau of Internal Revenue by Mr. Alprin in September and November, 1952? A. I know there was a statement but I don't remember the details, just snatches.

[7852] Q. Do you remember in that statement Mr. Alprin telling Mr. Victory and Mr. McCarthy that in the summer of 1945 he and his wife and Mr. Koerner, Mr. Roer, Mr. Silver and Mr. Rosenberg were in Vancouver? A. I don't recall that being read.

Q. Do you recall Mr. Alprin stating in that statement read here into the record, that statement made to Mr. Victory and Mr. McCarthy, that at some time during his visit to Vancouver that he had a conversation with you pertinent or relative to his being invited to make a stock contribution to the Harwood deal? A. No, sir, I have no such recollection.

The Court: Would you read the beginning of that question.

(Question read.)

The Court: Do you recall that Mr. Alprin's alleged statement to Victory and McCarthy was read

here in the trial? He is not asking you whether you recall the event. He is asking if you recall the statement having been read.

The Witness: I am sorry, sir, and I was confused.

A. I remember something to that effect.

[7852a] Q. You remember Mr. Alprin's statement to Mr. Victory and Mr. McCarthy was read here in the courtroom? A. I remember some parts of it and I remember that part of it being read, yes.

The Court: We will recess for lunch now until two-fifteen.

(Recess until 2:15 p. m.)

[7853]

AFTERNOON SESSION—2.15 p. m.

(Jury present.)

HYMAN HARVEY KLEIN resumed.

Cross examination continued by Mr. Donohue:

Q. Just before the recess, Mr. Klein, I was inquiring about a visit to Vancouver by Morris Alprin. You recall that he was in Vancouver, but you did not recall the date. A. That is correct, sir.

Q. May I hand you this paper writing and ask you to read it and see if it refreshes your recollection as to the date? A. Yes.

Mr. Donohue: May I have this marked, if it pleases the Court, Defendant Alprin's FB for identification.

(Marked Defendant Alprin's Exhibit FB for identification.)

Q. While that is being marked may I ask you to look at a second paper writing and ask you to read that and see if it refreshes your recollection on a point I will ask you about shortly. A. Yes, sir.

Mr. Donohue: And may I have this, if it [7854] pleases the Court, marked Defendant Alprin's FC for identification.

(Marked Defendant Alprin's Exhibit FC for identification.)

Mr. Donohue: If it please your Honor, I offer Defendant Alprin's FB for identification in evidence.

Mr. Bauman: With relation to FB the Government has no objection.

Mr. Kiendl: Defendant Klein has no objection.

Mr. Bender: Defendant Haas, your Honor, will object on the ground that the exhibit is not binding as to him.

Q. Mr. Klein, having seen——

The Court: Just a minute.

Mr. Donohue: I am sorry, your Honor. I beg your Honor's pardon.

The Court: Defendant Alprin's FB is received without objection by the Government or defendant Klein. The objection of defendant Haas is sustained.

(Defendant Alprin's Exhibit FB for identification received in evidence.)

[7855] Q. I hand you again Defendant Alprin's FB in evidence, Mr. Klein, and ask you if it refreshes your recollection as to when it was that Mr. Alprin was in Vancouver, Canada? A. Some time the early part of July 1945.

Q. 1945? A. The early part of it.

Q. The early part of July? A. Yes.

Mr. Donohue: I offer Defendant Alprin's Exhibit FC for identification, your Honor.

Mr. Bauman: In relation to that, the only possible relevancy is contained in the first paragraph after the salutation. As to that, I have no objection. As to the remainder, I object.

Mr. Donohue: I will limit the offer to the first paragraph, which I take it includes the salutation.

Mr. Bauman: Of course.

Mr. Kiendl: No objection on behalf of the defendant Klein.

Mr. Bender: Defendant Haas takes the same position with respect to Exhibit FC as he did with respect to FB, your Honor.

The Court: The date, salutation and first paragraph of Defendant Alprin's FC for identification [7856] is now received without objection by the Government or the defendant Klein, the objection of the defendant Haas being sustained.

(Defendant Alprin's Exhibit FC for identification received in evidence.)

Q. Will you take a look at Defendant Alprin's Exhibit FC and tell me if it refreshes your recollection as to the fact that Mr. Silver and Mr. Rosenberg were in Vancouver

at the same time as was Mr. Alprin (handing to witness)? A. I would say they were, sir.

Q. That was subsequent to the 12th of July, 1945? A. Yes, some time after that date.

Q. Would you say shortly after the 12th of July, 1945? A. I would say so.

Q. Does that refresh your recollection that in addition to Mr. Silver and Mr. Rosenberg and Mr. Alprin that Mr. Koerner and Mr. Roer were also present at the same time in Vancouver? A. It is possible, sir.

Q. The paragraph of the letter which was admitted in evidence is a copy of a letter to you [7857] written by Morris Alprin? A. Yes.

Q. And dated July 12, 1945? A. Yes.—

Q. The paragraph admitted by the Court after the salutation "Dear H. H." states:

> "Mr. Silver telephoned me this morning and stated it was important for him and Mr. Rosenberg to get up to Vancouver as quickly as possible."

Do you know of any urgency for Mr. Silver and Mr. Rosenberg to be in Vancouver in July 1945? A. I don't recall, sir, but it may have something to do with Auld Malcolm.

Q. May it have had something to do with the fact that it was in Vancouver in July 1945 when these persons whom you have identified were present that it was on that occasion you announced to each of them your intention and the intention of your Canadian associates to permit the persons named, Rosenberg, Silver, Alprin, Koerner and Roer, to purchase stock in some aspect of the Harwood enterprise? A. No, sir.

Q. Are you sure of that? A. I am reasonably sure of it, yes, sir.

[7858] Q. Are you positive of it? A. As positive as I can be.

Q. Do you recall when Mr. Alprin was examined by Mr. Victory and McCarthy in the fall of 1952, that his statement was read here in the court by Mr. Bauman or one of his asociates during the course of this trial? A. I remember it being read, sir; I don't remember the details.

Q. Do you recall that Mr. Alprin in the fall of 1952 stated to Mr. Victory and Mr. McCarthy, as read here into the record, that in the summer of 1945, while in Vancouver with Mr. Rosenberg, Mr. Silver, Mr. Koerner, and Mr. Roer, that you told Mr. Alprin that you had discussed his services with your Canadian associates, that they were pleased with his services, and that they and you and through you were going to make it possible for him to become a member of the family and to make an investment in the Harwood picture? A. No, sir, I don't remember any such discussion.

Q. Do you remember that that statement was made and was read into the record by Mr. Bauman [7859] or one of his associates during the course of this trial? A. I believe it was, yes.

Q. You have no recollection of any such discussion? A. I am willing to make a positive assertion that that did not take place.

Q. The fact of the matter is that within three months of the date of July or August, 1945, that you did accept a check of which Mr. Alprin was the drawer and of which

the Tivoli Trading Company was the payee in the sum of $500? A. One had no relation to the other.

Q. Would you mind answering my question. Did you accept such check? A. Yes, we did.

Q. And the fact of the matter is that prior to the 3rd of October 1945 when Mr. Alprin gave you that check that you had received one or more checks from one or more of the other persons who subsequently gave you checks? A. Some time in the latter part of December.

Q. At the time you received the check from Mr. Alprin, and you did receive it personally, Mr. [7860] Klein? A. I believe I did.

Q. Had you discussed with Mr. Alprin on any occasion the Tivoli Trading Company, S.A.? A. From what standpoint?

Q. Any standpoint. A. I have no recollection of doing so.

Q. Then, as a matter of fact, on the 3rd of October 1945 when Mr. Alprin drew his check payable to the order of Tivoli Trading Company, S.A., in fact you suggested to him that the check be so drawn? A. Oh, yes.

Q. As far as you know at that time he had no knowledge of what Tivoli Trading Company, S.A., was? A. I would say so.

Q. As a matter of fact, while Tivoli Trading Company had been incorporated in April or May 1945, on the date you received these checks, including Mr. Alprin's, Tivoli Trading Company had not functioned in any way? A. No, it had not.

[7861] Q. It wasn't until a month or more later that Tivoli Trading Company opened a bank account? A. Sometime in November, sir.

Q. Now, at the time Tivoli Trading Company opened the bank account, the bank account was opened, was it not, in the Royal Bank of Canada, New York agency or New York office? A. I believe that is correct.

Q. And do you recall that the resolution drawn with or deposited with the bank authorized the withdrawal of funds from Tivoli Trading Company, S.A., on deposit with the Royal Bank of Canada, New York agency, on checks signed by Mr. H. H. Klein, or signed by Mr. H. H. Klein, and countersigned by Mr. Rosenberg? A. No, I don't recall that, sir.

Q. Was it your practice to give Mr. Rosenberg authority to draw checks on Cuban and Panamanian corporations which had been formed for you or at your request and the request of your Canadian associates, of which he was counsel? A. He had some authority along those lines, yes, sir.

Q. First I hand you what has been heretofore marked as Defendant Klein's ES in evidence, and ask [7862] you to take a look at it, if you will? A. Yes, sir.

Q. That is a certificate of stock, is it not, issued to Ellis Rosenberg in the amount of one share of the capital stock of Tivoli Trading Company? A. That is the qualifying share, yes.

Q. This was issued, or was this issued as of the date that appears on the face of the certificate, December 31, 1945? A. I would assume so, sir.

Q. Heretofore, prior to December 31, 1945, another certificate of stock had been prepared for Ellis Rosenberg, had it not? A. Do you have it in your hand?

Q. I hope I do. You have no independent recollection of it? A. No, I don't, sir.

Q. I hand you what has been heretofore marked the Defendant Klein's EU in evidence, and ask you if you will take a look at it and see if it is not a certificate of stock issued to Ellis Rosenberg? A. Yes, sir, it is.

Q. May I have it just a moment. A. Certainly.

Q. And this certificate is for 200 shares? [7863] A. Yes, sir.

Q. And the date that appears on the face is November 26, 1945? A. That's correct, sir.

Q. Approximately a month before the second certificate in the amount of one share which you have called a qualifying share was issued? A. Yes, sir.

Q. Now, the certificate you have just identified for 200 shares to Ellis Rosenberg you say were never issued or were withdrawn? A. I said they were never consummated, sir.

Q. Never consummated. Well, this certificate was consummated to the point where it bears the signature of the president, Ellis Rosenberg. A. Yes, sir.

Q. And it does not bear the signature of the secretary? A. That is correct, sir.

Q. Was the secretary Jaime Cabarrocas, or was the secretary a Cuban? A. I don't recall, sir.

Q. Well, you don't recall. Well, the certificate of stock issued for one share a month later bears the [7864] name of the secretary. Do you know who the secretary is? A. No. It seems like Julio something, but I can't see—the stamp has obliterated the last name.

Q. And you don't know the secretary of this corporation which you had formed through Ellis Rosenberg? A. I don't recall it, sir, no.

Q. Now I notice that the certificate for one share is marked "Cancelled, March 27, 1947." Was that cancelled at the time when you acquired all of the shares of Tivoli Trading Company by exchange for certificates of stock in Hannes? A. No. That is when I acquired the Hannes stock for my stock in Tivoli.

Q. I am sorry. You acquired the Hannes stock on or about March 27, 1945, in exchange for your stock of Tivoli, whereupon you had the Tivoli stock cancelled? A. Hannes Company had it cancelled.

Q. Hannes Company. Well, was there any other stockholder of the Hannes Company, Mr. Klein? A. Let's keep it on a legal basis.

Q. Yes.

Mr. Kiendl: Mr. Donohue, someone suggested [7865] you said 1945. You intended March 27, 1947.

Mr. Donohue: I am sorry. I meant March 27, 1947. I think the Court caught the same mistake.

Q. Keeping it perfectly legal, Hannes & Company cancelled this stock? A. That's correct, sir.

Q. Now, you acquired this certificate of stock, which you have identified as a certificate for 200 shares, issued in the name of Ellis Rosenberg and signed by Ellis Rosenberg as president, on the 20th of March, 1945—it was subsequently acquired by you, was it not? A. Just repeat that question.

(Question read.)

Mr. Donohue: May I amend the question to change the 26th of March to the 26th of November? I am afraid the heat must be causing me to see these things wrong. Better put my glasses on.

Q. Did you acquire these certificates? A. Yes, I did, sir.

Q. Now, Mr. Rosenberg was the careful and cautious counsel for Tivoli who suggested at some time the preparation of receipts? A. Yes, sir.

[7866] Q. Can you explain, Mr. Klein, why this certificate was not cancelled as was the certificate for one share issued to Ellis Rosenberg on December 31, 1945? A. Would you show me both of them, please, sir?

Q. Yes, sir. A. This, sir, is a good certificate, signed by both the secretary and the president.

This certificate legally isn't worth the paper it is written on because it is not a completed certificate; hence, as such, wouldn't be recognized. That is my only explanation, sir.

Q. Now, I have another certificate I should like you to look at, handing you the defendant Klein's ER for identification, and ask you if that is not a certificate of stock of Tivoli Trading Company, S. A., signed by the president, secretary, bearing a cancellation of March 27, 1947, and issued to you? A. Yes, sir.

Q. For how many shares? A. One share.

Q. What is the certificate number? A. Number 1.

Q. Now I hand you another certificate of Tivoli Trading Company, which has been marked for identification [7867] the Defendant Klein's EU in evidence, and ask you

if that is not a certificate of Tivoli Trading Company, S. A., signed by the President, not signed by the secretary, issued to Morris O. Alprin, in the amount of 500 shares? A. Yes, it is.

Q. And is that also not—or is that not also certificate No. 1? A. Yes, sir.

Q. Were there two stock books kept by Tivoli Company, S. A., Mr. Klein? A. I wouldn't know how many stock books we kept or how many certificates there were, Mr. Donohue.

[7868] Q. You don't know whether—— A. No, because there might have been two separate stock books. The certificates are probably on sheets, and the mere fact one is marked No. 1 and the other is marked No. 1, one not being completed, he probably started to mark the other one No. 1. I am assuming that.

Q. Somewhere in evidence do you recall a series of resolutions that were prepared by Mr. Rosenberg as counsel for Tivoli Trading Company, the purport of the resolutions being the acquiring of all of the stock of Tivoli Trading Company by you, and the authorization to transfer the same to Hannes & Company? A. I don't remember that, sir.

Mr. Donohue: Do you have a copy of such resolution, Mr. Bauman?

Q. I have in my hand, Mr. Klein, what has been heretofore introduced in evidence as Defendant Klein's EV, which seems to be over the signature of Ellis Rosenberg and someone whose name you might identify for us, a record of the meeting of the board of directors of Tivoli Trading

Company, held December 31, 1945. Would you take a look at it (handing to witness). This resolution of the board of directors contains [7869] the following announcement—by the way, you were not at this meeting? A. Only by proxy.

Q. The chairman announced that "Mr. Hyman Klein has subscribed to 2850 shares of the common stock of this company, and that there has been paid into the company by him $2850 for this stock."

Now, as a matter of fact, you had not actually paid into the company anything as of the 31st of December, 1945, for this stock, had you, Mr. Klein? A. The purchase—you will have to refresh my memory. I am a little at a loss.

Q. Would you like to read it again? A. What was the date of Mr. Alprin's check?

Q. October 3, 1945. A. By purchasing their subscriptions, I had in effect paid it in.

Q. As a matter of fact, Mr. Klein, is it not true that as of the 31st of December, 1945, there was in the account of the Tivoli Trading Company, S. A., in the Royal Bank of Canada, New York agency, a deposit made in November of 1945, the amount of $2850, which represented the sum total of the checks which had been made payable to the Tivoli Trading Company for the [7870] purchase of stock? A. That's correct, sir.

Q. Further, the resolution states that the chairman also called to the attention of the meeting that there are outstanding two assignments of one share each of qualifying shares of stock, originally issued upon the incorporation of

this company, April 11, 1945. Do you recall that in this resolution? A. Yes.

Q. As a matter of fact, Mr. Klein, there never was a share of stock of any kind issued on April 11, 1945? A. Wasn't there introduced in this courtroom, Mr. Donohue, two certificates which I saw the other day?

Q. These (indicating)? A. I am not referring to those, the previous ones.

Q. The previous ones? A. That's right.

Q. Now I think perhaps this what you have reference to (handing to witness). A. That is correct. That is what I do have reference to.

Q. On the 11th of April, 1945, Sydney Jocelyn [7871] Williams and Octavio Fabrega executed these instruments which purported to be an assignment of their single share of the capital stock to whom? A. They are left in blank, but one obviously was Rosenberg and the other myself.

Q. The pencil notation near the blank line, which was left for the purpose of filling in the name? A. Yes.

Q. They indicate that one was to be Ellis Rosenberg and the other was to be you, Mr. Klein? A. Yes.

The Court: What exhibit number is that?

Mr. Donohue: Defendant Klein's Exhibit EQ.

The Court: My purpose in inquiring was that at the time Defendant Klein's EQ was received, it was originally marked for identification on July 27 in the morning, and it was received on July 27 in the afternoon. However, when it was received, specific exclusion was made of the pencilled initials in the right hand margin, and it was on that basis that it was received. Now it would appear to me, to keep

the record completely accurate, if the testimony now has been introduced as to some purported meaning of the pencilled notations, that the exhibit ought to be broadened.

[7872] Mr. Bauman: I objected to the pencilled notations, and if it is in order for me to do so, I withdraw that objection.

The Court: All right, then that accomplishes what I had in mind.

Mr. Kiendl: Then I offer it with the pencil notations.

The Court: The record is now clear that the pencil notations, according to the witness's testimony, in the case of one, are his initials next to the blank where normally a name would be inserted, and in the case of the other the printed pencil initials of Ellis Rosenberg next to the blank where the name would normally be inserted.

Q. As a matter of fact, Mr. Klein, this resolution states that the qualifying shares, the two we have reference to, were in fact assigned one to you and one to Ellis Rosenberg? A. That is correct.

Q. Subsequently or later in the minutes of this meeting, Mr. Klein, it states "Thereupon the chairman announced it was in order to issue 2850 shares of the common stock to Hyman Harvey Klein in payment of his subscription for such stock, and also to issue to [7873] Hyman Harvey Klein one certificate for one share of common stock of this company in return for a deposit of his assignment of subscription for said one share as above noted, and to issue to

Ellis Rosenberg one certificate for one share" and so forth.

This meeting occurred, did it not, on December 31, 1945? A. Yes.

Q. You had heretofore testified that sometime between the 26th of November, 1945, and the period of 30 to 60 days thereafter you had received from Mr. Rosenberg a receipt acknowledging the return of his $200 and cancelling his subscription to the stock of Tivoli? A. Yes.

Q. I think you testified heretofore that it was on Ellis Rosenberg's advice not only that you obtained these undated receipts, but it was upon his advice that you determined to cancel the stock subscriptions of the seven or eight persons whose checks you held, right? A. That's correct, but I want to correct one thing, if I may, and that is the statement on his advice I obtained the undated receipts.

[7874] Q. I am sorry.

Mr. Donohue: I will withdraw that question, if I may, your Honor.

Q. I will ask you if it was not upon his advice you obtained the receipts? A. Yes.

Q. And it is a fact that the receipts are undated? A. Yes.

Q. And was it upon his advice too that you determined to withdraw the subscription or to cancel the subscription of the seven or eight people who had given you their checks in September or October for stock in Tivoli? A. With their agreement.

Q. With their agreement? A. Obviously.

Q. Did their agreement precede or follow the advice of Ellis Rosenberg that the stock subscriptions should be can-

celled? A. No, it followed after Mr. Rosenberg came back.

Q. After Mr. Rosenberg came back from where, Mr. Klein? A. Whenever he brought those certificates back to me.

Q. You do not know where these certificates were kept? A. No.

[7875] Q. Now, I think you told us heretofore that Mr. Rosenberg advised you that minority stockholders can sometimes be a problem. A. That's correct, sir.

Q. And therefore he thought it would be advisable for you not to go through with your offer to permit these people to become stockholders. A. That we should not permit them to go through. You are using the term "I", sir.

Q. I am sorry. I fall into the same error as Mr. Bauman. When I say "I," I mean "we."

Mr. Bauman: I wish Mr. Donohue would speak for himself.

Mr. Donohue: You don't mind, Mr. Bauman, because I know that when——

The Court: I was just going to observe that you are both in excellent company.

Q. I think we all understand that when I say "I" I really mean to include your three Canadian associates who were three-quarters of the interest of these corporations, at least at this time, and you were only a quarter. A. Yes, sir.

Q. But it was Mr. Rosenberg who gave you that [7876] kind of advice about the problem posed by minority stockholders. A. Yes, it was, sir.

Q. And he didn't include himself as a minority stockholder when he retained one share of stock as a qualifying shareholder, did he, Mr. Klein? A. The one share was purely a qualifying share, Mr. Donohue.

Q. Couldn't a single shareholder or a holder of a single share as a minority stockholder be just as much a problem as Ellis Rosenberg could have been with 200 shares? A. undoubtedly, if he only had 10, but you are presupposing that a man who represents a company is at the same time going to sue him as a stockholder, and I hardly think that is possible, sir.

Q. Well, you wouldn't hazard a risk with your brother-in-law; you canceled his subscription, too, didn't you? A. I canceled—yes, sir.

Q. And you thought that these people, Morris Alprin, Irving Koerner, Albert Roer, Mr. Silver and Mr. Rokoff, some of whom had served you for many years, all of whom you say had served you well, couldn't be [7787] trusted as stockholders of a corporation? A. I don't say that, sir. That was a lawyer telling me that.

Q. You accepted his advice? A. That's right.

Q. Now, according to these documents you acquired all the stock save the single qualifying share remaining in the name of Ellis Rosenberg on the 31st of December 1945; am I correct? A. That's correct.

Q. And if I recall correctly, some time yesterday, reading from page 7723 of the stenographer's minutes, let me ask you if you recall this rather brief series of questions of answers, just to put it in context. These questions were asked by Mr. Bauman:

"Q. I show you your Exhibit DY, Mr. Klein. Each one of these is a receipt calling for the cancellation of a subscription to certain Tivoli stock, is that right?"

Your answer:

"That's correct, sir."

"Q. Can you tell me, please, when it was that you obtained them?"

[7878] Your answer:

"No, I can't, sir. It was some time between the cancellation of stock that Mr. Rosenberg brought in, which was——

"Q. November 20th—no. November 26th is the date of those certificates, Mr. Klein. A. You have got to go beyond that.

"Q. Well, you tell me, sir, when to the best of your recollection those cancelation receipts or whatever you want to call them were obtained by you from the individuals who signed them?"

Your answer:

"Well, I would say some time after that date to any time within 30 or 60 days, sir. I wouldn't know."

"Q. So that would have been any time in December 1945 or January 1946, is that right? A. Whatever it is; I don't recall exactly, sir."

Do you recall that yesterday? A. Yes, sir.

Q. Then would you say it was a fair statement of your recollection that you obtained the receipts which are the defendant Klein's DY in evidence some time within 60 days after the 26th of November, 1945? [7879] A. I won't specify that, sir. I said that any time within 30 or 60 days. Now I don't recall.

Q. By the way, while we are talking about the receipts, you have heretofore testified, I believe, Mr. Klein, that these were not all signed at the same time. A. That's correct, sir.

Q. You carried them around with you, did you, until you found the individuals who—— A. Oh, no, it wasn't a question of finding them, sir. When I came to New York it wasn't a question of finding them or carrying them around in my pockets.

Q. Well, were some signed in New York, Mr. Klein? A. I don't know. Either they came to Baltimore, I was in New York, but I am just remarking, commenting on the fact that you said I carried them around in my pockets.

Q. I didn't mean to state that as a matter of fact. I asked you did you carry them around in your pocket. A. I don't think I carried them around in my pocket, no, sir.

Q. Were they in the form in which I hold the exhibits, which are the Defendant Klein's DY, in my [7880] hand at the time you first received them? A. What do you mean, in form?

Size. A. In size?

Q. Yes. A. Yes, sir.

Q. You know, do you not, Mr. Klein, that it was heretofore stated by Morris Alprin to Mr. Victory and Mr. McCarthy, and that that statement was read here in evidence, that there was a recollection in his mind of an instrument which was longer than this, and which contained another paragraph on the top of a sheet; do you recall? A. I don't recall that, but are you saying that Mr. Alprin said that, sir?

Q. Yes. Do you recall that he so stated? A. I think he said something like that. I don't recall it exactly.

Q. And that is why I ask you, are you certain that when these receipts came into your hands, they were in the present physical form in which I now hold them in my hand? A. Positively, sir.

Q. Did you receive them all at one time when they came into your possession? Were they all handed to you at one time? [7881] A. I don't know what you mean, sir.

Q. You have heretofore testified that they were prepared upon the instruction of Mr. Rosenberg and physically prepared by Mr. Rokoff in Baltimore. A. That's correct, sir.

Q. Now, did he hand you all of these receipts at one time? A. I think he did, sir.

Q. You have heretofore been asked the question about the watermarks on these sheets. A. Yes, I have, sir.

Q. And you know, as a matter of fact, that the watermarks on these sheets are not all identical? A. Yes.

Q. And you know that some have watermarks and some do not have watermarks? A. No, I do not.

Q. Now, would you be good enough to take a look at Government's 339 in evidence, which purports to be the Royal Bank of Canada, New York account, of the Tivoli Trading Company, S. A.; and will you be good enough to

tell me what the first credit is to the account of Tivoli Trading Company, S. A. in the Royal Bank of Canada, New York agency? [7882]A. There are two amounts, sir. They total 147,938.59, representing $2850 in one instance and $145,088.59 in another instance.

Q. Now, you have no doubt from the testimony of Mr. Rokoff, which you likely heard, that the 2850 was the accumulated sum of the checks made payable to Tivoli Trading Company by the seven or eight persons we have heretofore named? A. Yes, sir.

Q. Do you know the source of the November 20th deposit of $145,088.59? A. No, I don't recall that, sir.

Q. I hand you what has been heretofore marked Government's 380 in evidence, which are the books of Tivoli Trading Company, and ask you if you will look on page 4 of the journal and tell me, if you can, from page 4 of the journal, the source of the $145,088.59 deposit to the credit of Tivoli Trading Company in the Royal Bank of Canada, New York agency, on that day? A. Douglas Ryan Syndicate, S. A.

Q. Now, will you tell me what the next deposit is in the Tivoli Trading account with the Royal Bank of Canada, New York agency, first from the bank sheet? [7883]A. 52,500 and 5350.

Q. Both made on what date? A. November 27th.

Q. O. K. Now, would you refer to the ledger and tell me the source of those deposits to the account of Tivoli Trading Company? A. I don't know what you mean "ledger." I see it right here.

Q. Well, I think that—maybe I am mis-calling it. I think it is a journal; at least that is what the caption is.

What is the source of those two deposits? A. One is Dunbar & Company—they are both Dunbar & Company.

Q. Now, before going to the next, may I ask you, going back again to the Douglas Ryan deposit of November 20th of $145,088.59, was Douglas Ryan concerned with the distribution of Harwood Blended Canadian Whiskey? A. I don't recall, sir. If you are going to ask me about how these commissions were arrived at, I wouldn't be able to recall, sir.

Q. No, I am simply asking, Mr. Klein if you know whether Douglas Ryan was concerned with the sale [7884] of Harwood Blended Canadian Whiskey or with the sale of anything else? A. At the moment, sir, I don't recall.

Q. Then may I ask you with respect to the two deposits of November 27th of John Dunbar & Company, was John Dunbar & Company concerned with the sale of Harwood Blended Canadian Whiskey? A. I don't think so, sir.

Q. You know that it was not, don't you, Mr. Klein? A. Without making a positive assertion, I am saying, I don't think so, sir.

Q. But don't you know that John Dunbar was selling Dunbar whiskey? A. It probably was also selling something else.

Q. Was it selling Harwood whiskey? A. No, it was not selling Harwood.

Q. Then you are certain whatever the activity of John Dunbar & Company may have been otherwise, it did not concern itself in any manner with the sale of Harwood Blended Canadian Whiskey? A. No, sir, it did not.

Q. Then it is a fact that as early as the 27th of November, 1945, there were deposits to the account [7885] of

Tivoli Trading Company in the Royal Bank of Canada, New York, which came from sources other than the sale of Harwood Blended Canadian Whiskey? A. Under the caption "Commissions Earned," yes.

Q. Now, will you refer to, perhaps, November 30th, which is the next date of deposit to the account of Tivoli Trading Company in the bank deposit record, and tell us what the deposits were on November 30th? A. $426,790.22, dated November 30, 1945, according to the bank records.

Q. So it would appear that by rapid calculation as of the 30th of November, 1945, there was on deposit to the account of Tivoli Trading Company in the New York agency of the Royal Bank of Canada over half a million dollars in money? A. Yes, sir.

Q. Now, would you look at the journal and tell us the source of the $446,790.22 deposit made to the credit of Tivoli Trading Company on November 30th? A. There are several entries covering that, I think, sir.

Q. May I ask you if there is an entry of—without going into the amounts—some 17-odd thousand [7886] dollars from Douglas Ryan? A. 17,000, yes.

Q. And is there an entry in the same day of some 26 some-odd thousand dollars from Douglas Ryan? A. Yes, sir.

Q. And is there an entry of some $32,804 from Douglas Ryan? A. That figure I cannot see, sir.

Q. O. K. Can you see an entry of $253,628 from John Dunbar? A. You probably have been over these. Is this the figure you have reference to, Mr. Donohue? I can't read that very clearly. It seems to me to be pretty much faded out, doesn't it?

Q. I concede it is very faded. It is only because I have a reference, otherwise, that I believe it is either 26 or 36,000 dollars. A. Well, maybe——

Q. There is an entry of an account or of a deposit—— A. At any event it is covered here by the bank.

Q. Yes. Now, do you find a $253,628 entry from John Dunbar? A. No. I have trouble with that one, too. [7887] Is this the figure.

Mr. Donohue: That is the figure, but I must say to the Court it is hardly legible. Let me see if I have a better copy.

Q. What page of the ledger are you looking at? A. Page 5.

Q. I am afraid this is just as bad, Mr. Klein. You are unable to determine the figure, but can you see that there is an entry of the receipt of the moneys from John Dunbar on that date? A. Yes, that is legible.

Q. On the same day do you see an entry of $115,970 from Agencias Destiladores? A. Yes, sir.

Q. This is November 30? A. 1945, yes, sir.

Q. When did Agencias Destiladores go out of business or when was it succeeded by some other company, do you know? A. Early part of 1946, I believe.

Q. Early part of 1946? A. I think so, I am not sure.

Q. Agencias Destiladores was concerned with the sale of Harwood Blended Canadian Whiskey? [7888] A. Yes, sir.

Q. You are not certain about Douglas Ryan? A. No, I am not.

Q. But you are certain John Dunbar did not distribute Harwood whiskey? A. Yes.

Q. What is the next date that you have for deposit in the bank account of Tivoli Trading Company? A. December 31.

Q. Will you find the entry in the journal? What is the amount of the deposit? A. The deposit according to the record of the bank does not show until January 7th.

Q. What is the amount of the deposit? A. The entry is $159,868.60.

Q. Will you look in the journal and tell me the source of that income to Tivoli Trading Company? A. It obviously is made up of several checks.

Q. From what companies? A. One from Douglas Ryan Syndicate, the other from Douglas Ryan Syndicate, another from John Dunbar, another from—that is all.

Q. Will you go to the next entry in the bank [7889] deposit, which is what amount? A. It would be January 15.

Q. And the amount? A. $444.40. That is a repayment.

Q. That was a check from Angus Kirby, was it not? A. I see nothing here.

Q. We will come to that in a moment. What is the next deposit? A. March 12th.

Q. And what amount and from what companies? A. That is again made up of several checks apparently. The total is $120,785.50.

Q. What companies were responsible for the income resulting in those deposits? A. It looks like Regan Potter, Waldorf, Cameron Stuart and the last one is not legible.

Q. Did Waldorf have anything to do with the sale and distribution of Harwood Blended Canadian Whiskey? A. I have no recollection whether Waldorf is an operating or holding company or investment company.

Q. Did Cameron Stuart have anything to do with the sale and distribution of Harwood Blended Canadian [7890] Whiskey? A. Intercompany, it may have, I don't know.

Q. Would you say, Mr. Klein, that as of the end of October 1945 from the document you have in your possession that there was substantially more than a half million dollars on deposit to the credit of Tivoli Trading Company in the Royal Bank of Canada, New York agency, and the sources of those credits were from the sale and distribution of Harwood Blended Canadian Whiskey and from other sources? A. You said the end of October 1945.

Q. I am sorry, I meant the end of December 1945. A. Yes, I have already agreed to that.

Q. Would you say that as of the end of 1946, the following calendar year, that there had been substantial deposits to the account of Tivoli Trading Company in the Royal Canadian Bank, New York agency, which sum did not come from the sale of Harwood Blended Canadian Whiskey? A. I would say so.

The Court: I will interrupt. We will have a fifteen minute recess.

(Short recess.)

[7891] *By Mr. Donohue:*

Q. When the Tivoli Trading Company was incorporated in 1945 and up until the time you acquired the inter-

est of your Canadian associates, you have heretofore testified that you held your Canadian associates' stock beneficially for them? A. Yes, sir.

Q. Did you feel that you also held the stock which Mr. Alprin, Mr. Koerner, Mr. Roer, Mr. Silver, Mr. Rokoff, Mr. Lechtzier and Mr. Rosenberg had paid for beneficially for them? A. No, sir.

Q. After 1946, the account of the Tivoli Trading Company, S.A. was transferred to the Royal Bank of Canada in a Canadian city? A. After what date?

Q. After the 31st of December or some time in 1947 was the account transferred to the Royal Bank of Canada in Montreal? A. I don't recall whether 1946 or 1947.

Q. Will you look at Government's Exhibit 140 in evidence, the accounts of the Tivoli Trading Company with the Royal Bank of Canada, Montreal, and tell us when the account was transferred from [7892] its New York agency to its Montreal branch? A. I don't think it shows here.

Q. What is the first deposit to the account of Tivoli Trading Company, to the credit of Tivoli Trading Company in the Royal Bank of Canada, Montreal, Canada? A. I don't see one. I see Royal Bank, New York agency, here, sir.

Q. Was this an account, a dollar account in the Royal Bank of Canada in its Montreal office? A. I don't know, sir. Does it so state?

Q. Would you look at the deposit slips that appear in that account for the deposit of money to the account of the Tivoli Trading Company, S.A. in the Royal Bank of Canada, Montreal, and see if there are not substantial deposits made to the account of that company in that bank?

A. Yes, sir, there is an original deposit here, I see, of $500,000. Whether that is the original or not, I don't know.

Q. April 3rd, is it, 1946? A. I don't see a date on here at all, sir.

Q. The $500,000 deposit slip bears no date? A. I don't see one, sir.

[7893] Q. Do you find a second deposit slip there that does bear a date? A. Yes, it does.

Q. For how much money? A. $581,000, dated April the 17th, '46.

Q. Do you find a deposit of December the 18th, 1946? A. Is this December the 18th? I am having difficulty with these, Mr. Donohue. Is this December? I can't tell.

Q. You find a deposit of the 18th of some month difficult to read—19—what year? A. '46.

Q. And the amount of the deposit? A. $2,164,000—it looks like $90.62.

Q. So that in, at least, the account of the Tivoli Trading Company with the Royal Bank of Canada, Montreal Branch, we find deposits in 1946 in the amount of $3,000,000? A. Strangely enough, Mr. Donohue, it doesn't even say the Royal Bank of Canada of Montreal.

Q. It is in the file of the Royal Bank of Canada, Montreal, introduced into evidence by the Government? [7894] A. Well, I am only referring to the deposit slip, that is all.

Mr. Bauman: I cannot hear the witness, your Honor.

The Witness: I am only referring to the deposit slip.

A. (Continuing) This deposit slip does not show Montreal at all. This deposit slip just says U. S. dollar account, payable on demand draft on New York. It doesn't say Montreal. It is not dated Montreal. Neither does this one, sir.

Q. Does any one of them show Royal Bank of Canada, Montreal? A. Only the first one.

Mr. Donohue: Will your Honor indulge me a moment while I try to decipher this?

Q. Do you note, Mr. Klein, that the address that appear on this exhibit—and I am reading from Government's 340 in evidence—reads U. S. dollar account, on the top of the exhibit? A. Yes.

Q. Payable by demand draft on New York. The name of the corporation, Tivoli Trading Company, S. A. A. Yes.

[7895] Q. And the address—— A. Care of the Royal Bank of Canada, New York agency.

Q. Then would that not suggest to you that the address for the Tivoli Trading Company, with its designation as care of the Royal Bank of Canada, New York agency, that you did have a deposit of that company in the Royal Bank of Canada, Montreal? A. I am not questioning that we probably had a deposit there, sir. I am sure we did. But I am only referring to those amounts and the fact that——

Q. Well, would you have any doubt that the account of the Tivoli Trading Company in the Royal Bank of Canada, Montreal, prior to its transfer to Hannes, contained at least $3,000,000? A. I don't know the amount, sir, but I know the account was in Montreal at that time.

Q. Would you say the account was substantially less than $3,000,000? A. I won't specify any amount, Mr. Donohue. I don't recall the exact amount.

Q. May I ask you to look at this debit memorandum in the account of the Tivoli Trading Company, Royal [7896] Bank of Canada, Montreal, and tell us if on the 10th of February, 1947, the account did not contain at least a $1,500,828.89? A. Yes, sir.

Q. And would you look at a check drawn, payable by Tivoli Trading Company, S.A., H. H. Klein, president, dated March 27, 1947, to Hannes & Company, Limited, S.A., in the amount of $1,043,035.00? A. That is correct, sir.

Q. By the way, was that $1,043,035.00 payable by check drawn by you as president of Tivoli Trading Company to Hannes & Company what was left in the account of Tivoli Trading Company after you had fulfilled your moral and oral obligations to these persons who had deposited checks with you in the fall of 1945? A. I think that is correct, sir, but I am not sure as to the amount.

Q. Then, Mr. Klein, when you say that, or said heretofore that the Tivoli Trading Company was formed as a catch-all only for the purpose of paying the Harwood commissions or bonuses to some or all of these seven or eight people, the Tivoli Trading Company was something more than that, wasn't it? [7897] A. I don't recall making any statement to the effect, Mr. Donohue, that it was formed only for the purpose of paying the Harwood commissions.

Q. Well, when you invited Morris Alprin to buy stock and accepted his check for $500 made payable to Tivoli

Trading Company, S.A., didn't you intend that he would become a stockholder in Tivoli Trading Company, S.A. for all of its purposes? A. I said to him at the time—I think the record so states, sir—that "This would be the company that would pay you a bonus, but we may activate that company."

Q. Well, if the company would pay him a bonus, Mr. Klein, he wouldn't get any more or less by being a stockholder in the company, would he? A. Only if we activated it, sir.

Q. Well, you did activate it, didn't you? A. Never.

Q. You activated it to the point where in the Royal Bank of Canada in New York you had more than $3,000,000 in deposits, did you not? A. No; million and a half didn't belong to it, sir.

Q. Well, you activated it to the point where by [7897-A] the 31st of November, 1945, after having made an initial deposit of Mr. Alprin's and other checks on the 20th of November it had over half a million dollars to its credit in the bank, did you not, sir? A. Yes.

[7898] Q. And you activated it to the point where it received moneys from companies which were not concerned with the sale of Harwood whiskey, did you not? A. Activation as your term and as my term, Mr. Donohue, is an entirely different thing. You are talking about deposits for commissions as a catch-all company. My term of activation means putting a company in actual operation, which is entirely different, sir.

Q. You don't think that this company that received deposits of millions of dollars was an activated company?

A. No, sir, not in my sense or interpretation of the term, no.

Q. Is it not, as a matter of fact, true, Mr. Klein, and can you not now so state from an analysis of the deposits to the credit of Tivoli Trading Company, both in the New York agency and the Montreal branch, that had you not cancelled, as you say, Mr. Alprin's subscription, that on the 27th of March, 1947, when you transferred the assets and liabilities, as you say, to Hannes & Company, that Mr. Alprin would have been entitled to a substantial greater amount of money than the $264,000 you gave him? [7890] A. No, sir, you are wrong, and if you stop to analyze it—if you would like me to, I will be glad to.

Q. I will be glad to have you do anything you want to answer the question, Mr. Klein. A. The company prior to the paying of those total checks, which amounted to about $800,000—do they not?

Q. Correct. A. And the balance of one million dollars or thereabouts that you say was left when it was transferred to Hannes & Company—is that right?

Q. Correct. A. That makes $1,800,000?

Q. Correct.

The Court: Who is asking the questions and who is answering them? That is a switch.

The Witness: I am sorry, your Honor.

The Court: It is O. K. with me, but it is a little novel, that is all.

A. Do you mind?

Q. I have no objection if the Court has no objection.

The Court: I have no objection, it is refreshing.

Q. The Court says you may go ahead. [7900] A. That totals $1,800,000. There are 2850 shares issued to those people, various subscribers. The balance of the stock would have been subscribed to by the Canadian group and myself. That would have given these gentlemen proportionately five per cent: Mr. Koerner 5 per cent of the total company, Mr. Alprin 5 per cent of the total company, Mr. Roer 10 per cent of the total company, and so on. If there was $1,800,000 left net, and they had 5 per cent, they would have gotten a great deal less money than is represented by the checks they received, sir. Mr. Roer should have received on the same basis double the amount that they received or Mr. Roer would have been entitled, if they were entitled to $50,000 or $90,000, then Mr. Roer on that basis would have been entitled to double, $180,000, whereas his was $272,000.

Q. Isn't that the basis on which Mr. Roer filed a civil suit against you, Mr. Klein? A. I don't know the reason why Mr. Roer filed a civil suit.

Q. You don't know the reason? A. Other than the fact he is making an unwholly warranted claim.

Q. You are talking about Mr. Alprin's 500 shares [7901] of stock as being 5 per cent of what? A. Five per cent of 10,000.

Q. Were 10,000 shares ever issued for Tivoli Trading Company? A. No, it was not.

Q. How many shares were issued? A. 2850.

Q. Mr. Ahrin's 500 shares would have been what percentage of 2850? A. Seventeen and a half or thereabouts probably.

Q. Substantially different from the 5 per cent you have indicated a few minutes ago? A. Assuming your basis for the moment, sir.

Q. O. K., assume my basis. A. If we take 17-½ per cent of $1,800,000, he would have been entitled on his basis or your hypothesis, shall I say, about $325,000 or thereabouts, fast figuring.

Q. You have been examining, Mr. Klein, certain records of the Tivoli Trading Company, S. A., books of account? A. No, I have not, only as they were shown to me here.

Q. I think it was yesterday you said that these books were not rewritten in Montreal in March 1947, [7902] they were just recopied. A. I said they were copied, not rewritten. There is a difference in my interpretation.

Q. Copied from what? A. Copied from another Tivoli book.

Q. What was the reason for copying the Tivoli records from one book into another book? A. The Canadians wanted a duplicate of the complete operation, sir, and instead of us getting the original book to which we were entitled, we received a copy of the original. That is the story of the Tivoli books.

Q. The book that we examined here, or what we have examined here, the photostats, now loose leaf of a bound book that Mr. Rokoff says was brought at Montreal, at or about the time the book was copied? A. Yes, sir.

Q. Who had the original book from which this copy was made? A. Mr. Rokoff.

Q. Who had the original books of Tivoli from which Mr. Rokoff made the entries or copied into the book of which we have a photostat? A. That is a little confusing sir. I don't get [7903] the question.

Q. Where were the books of account of the Tivoli Trading Company kept? A. I don't rightly recall, but it could be they were kept in Baltimore. I don't frankly recall.

Q. Then if they were kept in Baltimore, when you went to Montreal around the 27th of March, 1947, Mr. Rokoff would have taken that book to Montreal with him, would be not?

The Court: May I interrupt at least to try and straighten out my own confusion. There has been indiscriminate talk here, as matter of fact Mr. Donohue just did it, of books of account of Tivoli and of a book of Tivoli. I conjure up in my mind two different situations, and maybe Mr. Klein can answer. The book, if there were a book, from which a copy was made, of which copy a photostat is in evidence, was that the only record of account of Tivoli and does it contain, by pages, those portions in an ordinary double entry bookkeeping set of books that would normally constitute a set of books of account such as those that were brought here for Harvey, for example, or were there in addition to the book of which a copy was used to photostat a set of books of account of Tivoli? I would like to get that [7904] cleared up once and for all. Do you know, Mr. Klein?

The Witness: I believe there is only one book as such.

The Court: And that one book was broken down in miniature into the various segments that normally go to make up books of account of a company, is that our understanding?

The Witness: I would say that is my understanding. I don't understand books to be able clearly to explain to you just what I mean by a book.

The Court: I am not sure I understand it either. I am trying to resolve one thing, to find out whether there was just one book, which was the book of account, having certain pages denominated as the journal and certain pages as the cash book, similar to Mr. Rokoff's memorandum records with respect to the Cuban and Panamanian companies, or were there books of account similar to the whole set of books that were brought here for Harvey & Company?

The Witness: I would say definitely not.

The Court: Let us start from that point, maybe that will help us.

Q. I hand you again, Government's Exhibit 380 in evidence, which purports to be photostatic sheets taken from a bound book, the bound book containing the so-[7905] called records of account of the Tivoli Trading Company (handing to witness). Can you identify it as such? A. I would say it is, sir. Only saw it within recent months.

Q. Is that the bound book in its original form, which was bought——

The Court: I am sorry to interrupt you again, Commissioner, but don't I have a vague recollection.

Mr. Kiendl, when this book was offered into evidence, you offered to bring the bound book?

Mr. Kiendl: It is here.

The Court: It is marked in evidence?

Mr. Kiendl: No.

The Court: Is there any reason why it should not be?

Mr. Kiendl: None at all.

The Court: Let us get it into evidence so we stop talking about some phantom book of which these are loose leaf copies. I know a promise was made to bring the original here.

Mr. Kiendl: Here it is, your Honor. We will be glad to substitute it for the photostatic sheets.

The Court: We will allow the photostatic copies to become Exhibit 380-A, and the bound volume, [7906] from which I understand the photostats were made, on which there was writing, will become 380-B.

We are charging this to the Government. I take it there is no objection?

Mr. Bauman: That is acceptable, your Honor.

The Court: That the record may be completely clear on it, do the defendants Haas and Alprin desire to make any statement on the admissibility of this document?

Mr. Bender: I haven't even seen it, your Honor.

The Court: Then you look at it. It has been represented to be the original from which Government's Exhibit 380, now being marked 380-A, was photostated.

Mr. Bender: I am willing to accept that representation, from Mr. Kiendl. I thought that this was was merely nothing more than the same as the photostats which are already in evidence.

The Court: Except that it is the original and it is the complete bound volume. I might point out to you, Mr. Bender, and the others, on June 13, when Government's Exhibit 380 was received, there was no objection by the defendant Klein, but there was objection, which was sustained by the defendants Haas, Koerner, Alprin and Roer.

[7907] Mr. Donohue: We would have to object as not being binding upon us under any circumstances.

The Court: It was treated subsequently in the rulings on the motions to exclude, and it remained in, and from the testimony it would appear that the objections originally made would prevail. I do not want to unwittingly put you gentlemen in a position of changing your original attitudes toward exhibit 380, now 380-A. You originally objected and your objection was sustained. Mr. Bender did likewise. If you renew your objection, it will likewise be sustained.

Mr. Donohue: I do so, your Honor.

Mr. Bender: I so move.

The Court: Goverment's Exhibit 380 is now received as 380-A, without the objection of the Government, of course, and of the defendant Klein, and the objections of the defendants Haas and Alprin are sustained.

(Government's Exhibit 380 received in evidence as 380-A. Government's Exhibit 380-B received in evidence.)

By Mr. Donohue:

Q. Mr. Klein, I hand you what has just been introduced as Government's Exhibit 380-B in evidence, and ask [7908] you if you can identify that as being what (handing to witness)? A. That has been characterized as a copy of the Tivoli book.

Q. I hand you Government's Exhibit 380-A again, and ask you if you can identify these sheets as photostats of the sheets in the bound volume, Exhibit 380-B? A. That presupposes then, Mr. Donohue, that I go through every one of the sheets and say this is exactly a duplicate from this.

Q. From the testimony which has been introduced here and from the facts, as you know them, can you not assume that these are photostats of the sheets that appear in Exhibit 380-B, your counsel having so said? A. Yes, I will assume it.

Q. That book, Exhibit 380-B, is the book that Mr. Rokoff said he bought in Baltimore—withdrawn.

That book, Exhibit 380-B, is the book that Mr. Rokoff said he bought in Montreal at or about the time the records were made?

[7909] The Court: Well, I assume you don't do that deliberately. He testified that either he or Rosenberg, he didn't remember which one bought it, and it might have been both of them together.

He said he didn't remember.

Mr. Donohue: I am sorry. I wish my recollection of the evidence were as concise and clear as your Honor's.

The Court: You can test it. Maybe I am wrong, but that is my recollection, at any rate.

Q. In any event, you have no doubt that that book was purchased for the purpose of the Tivoli Trading Company by one of your agents in the City of Montreal at or about the time the records were copied? A. One of my employees, sir, not my agents.

Q. One of your employees; excuse me. A. There is a difference.

Q. I concede the difference.

Now, can you tell us from what source the entries in the bound book, 380-B, now before you, came? A. They came from the original books.

Q. Was it a book or a set of books, the original book? [7910] A. That I don't recall, sir.

Q. Where was it kept, if you know? A. I mentioned before, sir, it may have been kept in Baltimore. I don't recall, sir. I have no occasion at any time, Mr. Donohue, to look at books.

Q. Now, after the entries were copied from another book to 380-B, what happened to the book from which the entries were taken? A. The Canadians got it, sir.

Q. Well, can you tell me why on or about the 27th of March, 1945, the Canadians——

The Court: 7.

Mr. Donohue: I am sorry, your Honor.

Q. —1947, the Canadians would take the original book of entry of Tivoli Trading Company when you had acquired Tivoli Trading Company by purchase from them in December of 1945 or 1946 or January 10th of 1946? A. January 20th, 1947, sir.

Q. January 20th, 1947. A. That's right.

Well, sir, the memoranda books were there as well, sir, which was what was the purpose of Mr. [7911] Rokoff, Mr. Rosenberg, myself, I. J. Klein and A. M. McLennan being in Montreal. That is when he reconciled all the books. They apparently had asked Mr. Rosenberg for a copy of the Tivoli book. I answered by Mr. Bauman, I believe yesterday, when he asked me, "Did I ask for a copy to be made," and I said, "No, but Mr. Rosenberg did," in answer to a request by either I. J. or McLennan that they have a complete set of books, and they made another copy; apparently went out and bought one of these books in Montreal, made a copy of this book, and inadvertently took the original book, shipped it to Vancouver, and we were left with this one, sir.

Q. Now, there is no doubt in your mind that all the entries that appear in 380-B were made there at one time by Mr. Rokoff? A. When he copied the book undoubtedly he copied every entry in the book at one time.

Q. I ask you if it is not a fact that all the entries in that book were made by Mr. Rokoff in Montreal in March of 1947 and that they were not copied from another original book of entry? A. What is that question? Will you repeat that, [7912] please?

Mr. Donohue: Would you read the question, please?

(Question read.)

A. That is positively not correct, sir.

Q. Have you ever made any request or demand of your Canadian associates for the original book of entry or original books of Tivoli Trading Company? A. Sir, I believe that my former attorneys made requests on Vancouver time and time again for the books of all the companies in response to the Government's request, and, sir, while they were asking us for the books, they had already obtained the books or the memoranda books. The record so states in this courtroom, that they had the books in 1948.

Mr. Bauman: I move to strike the answer, your Honor. That is not responsive to the question and it was not elicited in response to the question.

The Court: Granted.

Q. In any event, you have not been able to receive from your Canadian associates the original book kept in Baltimore of the Tivoli Trading Company? A. Recently, sir, there has been no request on my part for the original of any books.

[7913] Q. In any event, you do not have possession of the original books of entry or book of entry of the Tivoli Trading Company which was kept in Baltimore? A. No, sir, I do not.

Q. Now, I think earlier in your examination, Mr. Klein, you indicated that there came a time in 1946 when it became apparent that the OPA was about to end. A. Yes, sir.

Q. Do you recall in the late spring or early summer of 1946, more specifically the 17th of May, 1946, a discussion in your office concerning the imminent end of OPA

at which Mr. Koerner, Mr. Jules Jacobs, Mr. Jaburg were present? A. In my office, sir?

Q. Yes, sir, in Baltimore. A. I don't have any such recollection. In May of 1946?

Q. May the 17th of 1946. A. I don't have any such recollection, sir.

Q. Do you have a recollection that at that time, because of the imminence of the end of OPA, that a discussion was had by you with Mr. Koerner, Mr. [7914] Jacobs and Mr. Jaburg at any place, in which the question of what would happen to the contract between Agencias and R. C. Williams or what would happen to the relationship between Agencias and R. C. Williams when the end of OPA came about? A. I don't recall, sir.

Q. Do you recall on the same day, as the meeting was in progress, that Morris Alprin also joined the meeting and entered into the general discussion on the subject matter I have indicated? A. I don't recall that meeting at all, sir.

Q. Do you recall at any time in May or June of 1946 discussing with Mr. Alprin the fact that when the OPA ended that you intended to expand the sale of Harwood whiskey into the Central and South American markets? A. I may have, sir. I don't recall.

Q. And do you remember at a time when you discussed this subject matter with Mr. Alprin suggesting to him that he form some Cuban corporations with the end in view that he might obtain from you, when OPA ended, an agency for the distribution of Harwood whiskey in Central or South America? A. No, sir, I do not, sir.

[7915] Q. Do you remember that at that conversation you said to Mr. Alprin that "Ellis Rosenberg has had a

lot of experience in the formation of Cuban corporations. I will have him talk to you about the subject matter"? A. No, sir.

Q. Some time in June of 1946 did Ellis Rosenberg tell you that he had discussed the matter of the formation of Cuban corporations with Mr. Alprin here in New York? A. No, he did not, sir, and may I for the moment—when did the OPA go out of business? It hit a a hiatus in June, did it not?

Q. June 30th, 1946.

Do you know that in June of 1946 that Ellis Rosenberg when to Cuba and there met with Mr. Alprin and Mr. Roer and Mr. Koerner to discuss the formation by them, Roer, Koerner and Alprin, of Cuban corporations? A. I learned that subsequently, yes.

Q. Do you know that, and did Mr. Rosenberg advise you subsequently, that Mr. Alprin, Mr. Roer and Mr. Koerner had formed each four Cuban corporations? A. He said they had formed corporations. [7916] I don't believe he mentioned any amount.

Q. Is it a fact that following his return from Cuba in 1946, in the summer of 1946, that Ellis Rosenberg gave you a statement of the identification and names of the corporations which were formed by Mr. Roer, Mr. Alprin and Mr. Koerner? A. That is not correct, sir.

Q. In February or March of 1947 did you inform Mr. Alprin that you were liquidating his interest in the Harwood picture and that you would advise him soon to come to Baltimore and get his distributive share? A. No, sir.

Q. Is it not a fact that there came a time when Mr. Alprin did go to your office in Baltimore and did receive

from you a bank draft drawn on the Royal Bank of Canada in the round figured sum of $264,000? A. Yes, it is, sir.

Q. Did he come there by prearrangement with you on some notification from you? A. I think he did, sir, yes.

Q. Do you recall when with relation to the time that Mr. Alprin came to Baltimore for that [7917] purpose that you notified him with respect to the purpose of this meeting? A. You mean as to the date of the check and when I told him to come to Baltimore to get the check?

Q. Yes. A. I think I testified, sir, it would have to be a few days after I got back, and since the check is dated, I believe, March the 27th it could have been any time within three to four days.

The Court: I will have to interrupt. By arrangement with counsel, you will recall, we are suspending at 4.15 today. So under the circumstances we are in adjournment now until 10.30 tomorrow morning.

(Adjourned to August 3, 1955, at 10.30 a. m.)

[7918] New York, August 3, 1955.
10:30 o'clock a.m.

Trial resumed.

(Jury in box.)

Mr. Donohue: With your Honor's permission I should like to interrupt my examination of Mr. Klein to call out of turn one character witness, if I may.

The Court: Surely.

Mr. Donohue: Judge Keogh, will you take the stand, please?

J. VINCENT KEOGH, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Judge Keogh, what is your address, please, sir? A. 122 Warwick Street, Brooklyn, 7.

Q. And what is your business occupation or profession? A. I am currently a Justice of the Supreme Court of the State of New York.

[7919] Q. How long have you been a justice of the Supreme Court of this State? A. I am in my fifth year.

Q. Judge, do you know the defendant Morris O. Alprin? A. I do.

Q. How long have you known him? A. Approximately ten years.

Q. Do you know other people in this community who also know Morris Alprin? A. I do.

Q. Under what circumstance did you become acquainted with him? A. Approximately ten years ago I returned from service outside of continental United States. When I returned I found that my brother and I were interested in a wholesale liquor business. I spent part time at that establishment for only a few months, at which time I was appointed United States Attorney for the Eastern District of New York.

Since that time I have had contact with mutual friends in the industry, wholesalers, distillers, retail package dealers and the like.

Q. Judge, do you know what Morris Alprin's reputation is among the people whom you know who also know him for truth, veracity, honesty and integrity? [7920] A. I do know his reputation.

Q. What is that reputation, Judge? A. Well, I should say in his position as general counsel to the Dealers Association, his reputation is one of conscientiously guarding and upholding the good reputation of the men and women in the industry.

Mr. Donohue: Thank you, sir.
You may have the witness.
Mr. Bauman: I have no questions, sir.
The Court: Mr. Kiendl?
Mr. Kiendl: No, your Honor.
Mr. Bender: No questions, your Honor.

(Witness excused.)

[7921] HYMAN HARVEY KLEIN resumed.

Cross-Examination Continued by Mr. Donohue:

Q. By the way, Mr. Klein, when you said yesterday that with respect to Tivoli Trading Company and from the beginning except for a qualifying share ultimately held by Ellis Rosenberg that you held the stock for yourself and beneficially for your Canadian associates, did you thereby mean to say that though the records of the books of Tivoli failed to disclose any interest or ownership on the part of your Canadian associates, they were, nevertheless, inter-

ested by way of some oral and unrecorded agreement with you? A. But with a definite understanding, sir.

Q. Pardon me? A. With a definite understanding.

Q. To negative any impression that one might gain from a study of the books of Tivoli, it would be only your word that could establish the fact that your three Canadian associates in fact were the owners of 75 percent of the interest in that company? A. Would they deny it, sir?

Q. I just asked the question. Is that the fact? A. That is the fact.

Q. We were discussing as we adjourned yesterday [7922] the occasion in late March or early April of 1947 when Mr. Alprin came to Baltimore and in your office you delivered a draft in the amount of two hundred and sixty-four-odd thousand dollars to him. Did I understand you on your direct or perhaps on your cross-examination to say that it was your then recollection that Mr. Koerner was with him? A. I think I did say that, I wasn't sure, but I thought he might have been there.

Q. Is it not a fact that Mr. Roer was with him rather than Mr. Koerner? A. I don't recall that.

Q. Does the fact that when you gave Mr. Alprin a draft made payable to the La Economica Agencias, which was for him, and at the same time gave him a second draft in like amount, also payable to La Economica Agencias, which was for Mr. Koerner? Does that refresh your recollection as to the fact that Mr. Koerner was not there on that occasion? A. It doesn't refresh my recollection, but it is possible he was or wasn't.

Q. Are you satisfied in your mind now that on the day in question you did give Mr. Alprin two drafts made payable to La Economica Agencias, each [7923] in a like amount of two hundred and sixty-four-odd thousand dollars? A. I wouldn't dispute that, sir.

Q. If I may call your attention to the fact that in the statement made to the Bureau of Internal Revenue on the 21st day of October 1952 by Morris Alprin, subsequently read into the record of this proceeding, reading briefly from page 7 of that record, with reference to the occasion when the draft was delivered, I will read the whole paragraph:

> "Mr. Klein called me into that washroom, gave me this check and told me it was in liquidation of the Tivoli Corporation and at the same time gave me another check in the same amount drawn to the same Cuban corporation, my Cuban corporation, La Economica Agencias, which Mr. Klein stated was Mr. Koerner's subscription in liquidation in Tivoli."

Do you recall that statement being read into the record of this proceeding? A. Yes.

Q. Did you in fact so state to Mr. Alprin? A. No, I did not.

Q. If I may refer to the record in this proceeding, referring now to page 5332 of the stenographer's [7924] minutes, wherein was read into the record of this proceeding a statement or a series of statements made by you to the Bureau of Internal Revenue on November 26, 1952, may I ask you if these questions were asked of you and if you did in fact make these answers:

"Q. At the time you gave this draft to Alprin, did you place any restrictions of any kind barring the use of these funds by Alprin or his company? A. I may have. I don't have any such recollection."

Do you recall making that statement? A. Yes, sir.

Q. As a matter of fact, Mr. Klein, did you on the occasion when you delivered the draft to Mr. Alprin, payable to La Economica Agencias, which was for him, place any restriction upon him with respect to the time at which he might deposit that draft for collection? A. I have no recollection of making any such statement, sir, other than the fact that I made the statement that I may have said to him "I wouldn't be in a hurry to use it, if I were you, because of the OPA."

Q. At the time you delivered to Mr. Alprin in [7925] your office in Baltimore a second draft payable to La Economica Agencias, which was for Irving Koerner, did you place any restriction on Mr. Alprin's delivery of that draft to Mr. Koerner? A. I have no such recollection, sir.

Q. May I ask you if you recall having been asked this question and having made the following answers also to the Bureau of Internal Revenue on November 26, 1952, same page:

"Q. Mr. Klein, can you account for any reason you might have for placing any restrictions of any kind at the time you tendered the draft to Mr. Alprin? A. Only one.

"Q. What would that be, sir? A. The OPA going into various banks and subpoenaing documents, that I might have said to him, 'If I were you,

I wouldn't be in such a hurry to use it.' I could have said that. Whether I did or not, I don't know."

Do you recall being asked those questions and having made those answers? A. Yes, I do, sir.

[7926] Q. Referring to page 5334 of the stenographers' minutes, may I ask you if at the same conference with representatives of the Bureau of Internal Revenue you were asked this question:

"Q. Is it your testimony that at the time you delivered this draft to Alprin that he was free to make any disposition of the funds he so wished?"

to which you made this answer:

"Only in the question that I doubt in my own mind raised previously."

Was that question asked and did you make that answer? A. Yes, sir.

Q. And reading from page 5341 of the stenographers' minutes, may I ask you if at the same conference with the representatives of the Bureau of Internal Revenue you were asked this question—in order to make the context clear; I shall go back one or two questions:

"Q. What did this payment from Tivoli Trading Company to Irving Koerner represent? A. Well, as in the case of Morris Alprin, I think it will well be termed a bonus.

"Q. A bonus for what? A. For a job well done; and in the attempt to foster the sale of a product, Harwoods."

[7927] Mr. Donohue: May we agree that the next "A" should be a "Q" in the record?

Mr. Kiendl: If you say that is so, I will be glad to.

Mr. Donohue: The context would make it appear, if it pleases your Honor, that an "A" is where a "Q" should be, indicating a question rather than an answer.

The Court: What page?

Mr. Donohue: Page 5341, if it pleases your Honor. The 8th line from the top.

The Court: It would appear that that should be so.

Mr. Bauman: I don't think there is any question about it.

The Court: All right.

Mr. Donohue: Thank you, your Honor.

Q. (Continuing) "Q. With respect to the draft for Irving Koerner, did you place any restriction of any kind barring the use of these funds by Koerner at the time it was given to him? A. I answered that previously, Mr. Victory, the other day, when I said that I have no such recollection, although I may have.

[7928] "Q. Were any instructions of any nature whatsoever given to Alprin which he was to convey to Koerner, as to any restriction in the depositing of the draft? A. I have no such recollection at this date. And again, I can only repeat: I may have, but I don't have any such recollection."

Were those questions asked and did you make those answers, Mr. Klein? A. If the record so states, sir.

Q. Reading now from page 5345 of the stenographers' minutes, again a record of your testimony before representatives of the Bureau of Internal Revenue, were you asked the following questions and did you make the following responses:

"Q. At the time, either March or April, 1947, when you gave this draft to Roer, did you place any restrictions of any kind barring the use of these funds by Roer or his company? A. As in the case of the other two, Mr. Victory, that I have already answered, I can say I have no recollection, although I may have.

"Q. Did you give Roer any specific instructions as to what he was to do with the draft? A. No, sir, not to my recollection.

[7929] "Q. Is it your testimony then that at the time you delivered this draft to Albert Ros he was free to make any disposition of the funds he so wished? A. Subject to my previous answer, Mr. Victory.

"Q. Can you give any reason why Roer would not use this sum of money for his own personal benefit from the date of receipt in 1947, and why he held the sum of money for a considerable time? A. That again relates to my previous answer, wherein you asked that I put any restrictions on

the use of the check. I say again that I have no such recollection, although I may have."

Did you make those answers to the questions as asked? A. If the record so states, I did, sir.

Q. And may I ask you, Mr. Klein, having on as many occasions as I have referred to in 1952 having stated that you may have put some restriction on the use of these drafts, do you now have any definite recollection of what, if any, restriction you may have put upon the use of these drafts? A. I have no such recollection that I put any restriction, sir. That was purely—I was purely answering a question, a definite question, "Did I?" Well, I have no recollection that I did, sir.

[7930] Q. Well you know, as a matter of fact, that Mr. Koerner—pardon me, strike that—you know, as a matter of fact, Mr. Klein, that Mr. Roer, who received this draft in the sum of two hundred and seventy-two odd thousand in late March or early April of 1947 did not actually deposit that draft and utilize the funds it represented until some three years later in 1950, do you not? A. 1950, but in 1951 he still told me he had the check, or so I recall.

[7931] Q. Well, then, may I ask you if you are of the opinion, or do you know that though he received the draft in 1947 that he still had possession of it in 1951? A. I was told that the check had been cashed by the Royal Bank of Canada when I was in Montreal in the early part of 1952, sir.

Q. Told that it was cashed when? A. Previously, in 1950, that it had been cleared.

Q. Then you do know that for a period of approximately three years Mr. Roer did not utilize the funds represented by that draft in any way? A. Yes, I do, sir.

Q. And you know as a matter of fact that with respect to the $264,000-draft given to Mr. Alprin he did not use that draft or the proceeds thereof for a period of five years after the draft was given to him? A. My understanding, sir, is it was deposited two weeks after he received it.

Q. Where was it deposited? A. I heard in this courtroom it was deposited in Toronto.

Q. Toronto, Canada? A. Yes, sir.

Q. Did you advise or direct him to deposit the draft in Toronto, Canada? A. Positively not, sir.

[7932] Q. You know, however, that he did deposit the draft in Toronto, Canada? A. Yes, I do.

Q. And you know that shortly after it was deposited that the draft was frozen by the Canadian Government? A. Yes. For a period of almost two years, I think, sir, but they also froze many other accounts at the same time.

Q. Do you know why? Did you learn why the draft of La Economica Agencias was frozen while on deposit in a Canadian bank? A. No, I did not, sir. Well, may I say that I think it is possible that they thought there was some taxes due in Canada and that is why they froze it temporarily.

Q. Well, when they froze the draft of La Economica Agencias in Canada, they froze other accounts in Canadian banks, did they not? A. Oh, yes, they froze my personal bank account, Hannes & Company.

Q. Then is it not a fact that the draft of La Economica Agencias on deposit with the Royal Bank of Canada in

Toronto was frozen at a time when all of the accounts which could be attributable in any way to you were frozen in Canada? [7933] A. Anything that had to do with foreign companies were frozen, yes.

Q. Well, do you mean anything to do with any foreign companies or just foreign companies with which in any way you were associated? A. Well, I was not associated with the Economica Agencias, sir.

Q. But was it frozen by the Canadian Government upon the theory that you were associated with it? A. I wouldn't know the theory, sir.

Q. You employed counsel in Canada to procure the unfreezing of the various accounts which were frozen, did you not? A. I had counsel in Canada at the time, sir.

Q. You had counsel in a gentleman by the name of Mr. Stikeman? A. H. H. Stikeman.

Q. And do you know whether or not Mr. Stikeman was responsible for procuring the unfreezing of the Economica Agencias account in Canada? A. No, I do not, sir.

Q. You didn't discuss that with him? A. No, sir, I did not.

Q. And it isn't a fact that after you engaged Mr. Stikeman as counsel and after the accounts in Canada [7934] were frozen that you so notified Mr. Alprin? A. I don't believe so. I think Mr. Rosenberg probably did, but I did not, sir.

Q. Did he do so, if he did so, at your direction? A. I couldn't say with a certainty, sir.

Q. Isn't it a further fact, Mr. Klein, that after the account was unfrozen in Canada that you directed Mr. Alprin to return the draft to the United States by obtaining a new

draft from the Royal Bank of Canada, Toronto, and to continue to hold that draft, which he did? A. No, sir, that is not a statement of fact.

Q. Now, do you consider the deposit of the Economica Agencias draft in the Royal Bank of Canada, Toronto, as a utilization of that fund for the personal reasons of Mr. Morris Alprin? A. You are asking me to assume something, sir.

Q. Yes. A. I am not willing to assume it.

Q. You have no opinion on that subject? A. I have no opinion.

Q. But you do know that after the Canadian accounts or the foreign company accounts were unfrozen by the Canadian Government in 1949— A. I think it is the year, yes.

Q. —that Mr. Alprin received back from the [7935] Royal Bank of Canada, Toronto Branch, a bank draft payable to La Economica Agencias in identical amount with the draft you originally gave him, minus $50.06, do you not? A. I heard it so stated in this court.

Q. And do you not know, Mr. Klein, that after Mr. Alprin received that draft payable to La Economica Agencias in 1949 that he continued to hold that draft until 1952, when he deposited it to his own account? A. I so learned.

Q. And you know that during the period from 1947, when Mr. Alprin received a second draft payable to La Economica Agencias, and in the amount of $264,000-odd for Mr. Koerner, that he held that draft for Mr. Koerner until sometime in March of 1952, five years later? A. From Mr. Koerner I learned he held it from 1949 there on.

Q. Now, you recall giving the draft to Mr. Alprin for Mr. Koerner? A. No, I don't have any direct recollection, sir.

Q. In any event, you learned that Mr. Alprin held the draft that you intended for Mr. Koerner? A. Yes, sir.

[7936] Q. And how many times would you say after 1947, the date of the delivery of the draft, until 1952, when the draft was given to Mr. Koerner, that Mr. Koerner spoke to you about getting the draft? A. Many times, sir. I don't recall.

Q. Now on any of the occasions, as a result of Mr. Koerner having spoken to you about Mr. Alprin's refusal to turn over the draft to him, did you ever call Mr. Alprin and tell him to deliver the draft to Mr. Koerner? A. No, sir. No, I did not. I told him that was between him and Mr. Alprin.

Q. Now, you gave a check on the 24th of February, 1947, drawn on the account of Tivoli Trading Company, as opposed to a draft, to Ellis Rosenberg? A. Yes.

Q. What was the amount of that check, Mr. Klein, do you recall? A. I think it was $55,000, sir.

[7937] Q. And where did you give that check to Mr. Rosenberg? A. That I do not recall.

Q. You know that Mr. Rosenberg deposited that check in the Royal Bank of Canada, don't you, in Toronto? A. No, I do not.

Q. You do not know that? A. I don't have any recollection that he did.

Q. You gave Mr. Haas a check in the amount of $35,000 drawn on the account of Tivoli Trading Co. S.A., did you not? A. Yes, sir.

Q. And where did you give him that check? A. In Baltimore, I believe.

Q. You know that check was deposited in the Royal Bank of Canada, Toronto, do you not? A. I so heard it in this courtroom.

Q. Isn't it a fact that you directed Mr. Rosenberg to deposit his check drawn on the account of Tivoli Trading Co., in the amount of $55,000 in the Royal Bank of Canada, Toronto? A. No, sir, it is not a fact.

Q. Is it not a fact that you also directed Mr. [7938] Haas to deposit his check drawn on the account of Tivoli Trading Co. in the Royal Bank of Canada, Toronto? A. That is not a fact.

Q. Is it not a fact that you directed Mr. Alprin to deposit his bank draft in the amount of two hundred, sixty-four-odd thousand dollars in the Royal Bank of Canada, Toronto? A. That is not a fact, sir.

Q. And do you know of any reason, Mr. Klein, why Mr. Alprin should deny himself the use of two hundred and sixty-four thousand dollars, the interest on two hundred and sixty-four thousand dollars, for a period of five years unless it was done at your instruction? A. Sir, you are asking me to assume why another man did something. I cannot assume that.

Q. You would have no explanation for it? A. I certainly haven't.

Q. May I direct your attention to page 4657 of the stenographer's minutes, reading from the statement to the Internal Revenue Bureau by Mr. Haas, as reported on that page of the transcript—however, in order to make the context clear, I shall go back to page 4656 and ask you if

you recall hearing read into the record [7939] these questions and these answers, the questions put to Mr. Haas and the answers made by him:

"Q. Why were these three drafts previously referred to payable to Cuban corporations if the funds so paid in March 1947 were due to the individuals? A. This is information which I received from Alprin after the time he got his check. When Klein sold out he planned to go into business again, and since his previous method apparently had been so successful, he was going to use the same procedure and he was going to take in Alprin et al. He then, in liquidation or partial liquidation of Tivoli, delivered a draft to Alprin, which Alprin informed me and which I believe, was given to him with the specific restriction that it was not to be used until Klein told him, and I will later say why I believe. Thereafter, Alprin was instructed to deposit this one draft in Canada, which he did, and was told at that time also that it was not to be used.

"Q. Instructed by whom? A. Klein. That is why he told me. I will tell you why I believe that. A short time thereafter those accounts were blocked and they were not released until February 1949, whereupon a new draft was issued to [7940] Alprin, and again he was told not to use it, as he informs me, and I have been told by him that that check was not unconditionally released to him until either January or February of this year. Now I will tell you why I believe it. Klein told me of this plan in 1947 to go into business again, and bear in mind he could

not have gone into business in the spring of 1946 because he was tied up with a contract with Williams and U. D. L. He told me about this plan of his, and he said he is going to give me an opportunity to make some money; he said he was going to have Roer transfer one of his corporation to me for the account of my firm, and that he would lend it $35,000. Roer did transfer a corporation to me and Klein issued a check which he handed to me, in the name of the corporation, for $35,000, and he told me not to use it, but to deposit it up in Canada until he told me what to do."

Did you tell Mr. Haas at the time you gave him a bank check in the amount of $35,000 not to use it? A. May I say, sir, that that entire statement is a figment of somebody's imagination so far as I am concerned.

[7941] Q. Will you answer my question, please. Did you tell Mr. Haas at the time you gave him a bank check in the amount of $35,000 not to use it? A. No, sir.

Mr. Bender: May we correct the record?

It is a corporate check.

Mr. Donohue: A bank check drawn by Tivoli Trading Company and payable to a corporation, La Ribera Comercial, not payable personally to Mr. Haas.

Mr. Bender: Thank you.

The Witness: It was a corporation check, not a bank draft.

Q. Did you at the time you delivered the bank check so described, tell Mr. Haas not to use it? A. No, I did not.

Q. Did you at the time you delivered the bank check so described, tell Mr. Haas to deposit it in Canada? A. No, sir.

Q. May I refer you now to page 3001 of the stenographer's minutes and ask you if you recall being read into the record a transcript of the testimony of Mr. Albert Roer made to representatives of the Bureau of Internal Revenue, this question and this [7942] answer having been so read in the record:

> "Q. Will you tell us the circumstances and details of when, where and from whom you received this draft. A. Mr. Klein called me down to his office sometime in March 1947 and he handed me this check and told me that 'This is in partial liquidation of some of the corporations that were liquidated, and do not deposit the check now. Hold it for a while, and I will let you know when to deposit it. And at a later date you will be given an accounting and the balance due you on the 10 percent liquidation.' "

Did you make that statement to Mr. Roer with respect to the purpose for which you gave him the draft with respect to your request to hold it? A. The entire statement is not a statement of fact.

The Court: Will you answer the question, please. A. The answer is no, I did not say that.

Q. Mr. Klein, did you know that several weeks prior to the meeting in Montreal on or about March 27, 1947, that Ellis Rosenberg was in Cuba? A. Mr. Rosenberg was in Cuba many times; I don't [7943] remember the dates.

Q. Did you know that in early March 1947, the month during which this meeting was held in Montreal, Canada, that Mr. Rosenberg went to see Mr. Valverde, a Cuban lawyer? A. No, I do not.

Q. Do you recall Mr. Valverde as the Cuban lawyer who testified here that he formed certain Cuban corporations for Mr. Roer, Mr. Koerner and Mr. Alprin? A. Yes, I do.

Q. Did you know that early in March 1947, Mr. Rosenberg called on Mr. Valverde, asking him for a resolution from each of the companies constituted by Koerner, Alprin and Roer, certifying the powers of that company with relation to the opening of bank accounts and drawing bank checks? A. I have no such knowledge, sir.

Q. If he did so visit for that purpose, was it not done at your request or by your instruction? A. I just said, sir, I had no such knowledge. Probably he was acting for them as attorney, if you say he was there.

Q. Do you know of any occasion when Mr. Rosenberg [7944] acted as counsel for Mr. Alprin? A. I don't know at all. I have no such knowledge.

Q. Yesterday I asked you to examine certain of the records of the Tivoli Trading Company in both New York and Montreal, and if you will recall, you indicated that on the first day that a bank deposit was made in the name of the Tivoli Trading Company on the 20th of November 1945 in the Royal Bank of Canada, New York agency, that included in that initial deposit was an amount of $2,850 which represented the total of the checks of those who had given you checks in the belief that they were buying stock in that company. A. Subscribed for stock.

Q. You recall that that was in the initial account? A. Yes.

Q. I hand you what has been marked Government's Exhibit 340 in evidence, which purports to be the bank statement of Tivoli Trading Company in the Royal Bank of Canada, Montreal, and ask you what the last withdrawal indicated by that account is. A. You will have to help me here.

[7945] (Mr. Donohue confers with the witness.)

A. $802,949.02.

Q. The last withdrawal from the Royal Bank of Canada, Montreal, of the Tivoli Trading Company was $802,949.02, and represents, does it not——

The Court: What exhibit is that?

Mr. Donohue: Exhibit 340.

The Court: What is the name of it?

Mr. Donohue: Tivoli Trading Company, Royal Bank of Canada, Montreal.

The Court: In framing your question in asking about the $2,850, didn't you mention the New York agency?

Mr. Donohue: The original deposit was made in the New York agency.

The Court: It is a different exhibit.

Mr. Donohue: The Government's Exhibit 340 is the New York account.

Q. Do you recall that the bank account of Tivoli, originally opened with the New York agency of the Royal Bank of Canada, sometime in 1946, was transferred in its entirety to the Royal Bank of Canada, Montreal? A. I

don't remember whether it was 1946, but whatever the date is.

[7946] Q. The last entry in the bank statement of the Tivoli Trading Company, Royal Bank of Canada, Montreal, of $802,000 represents the total of the three bank drafts, one to Fernandina and two to Economica, is that right? A. I believe that's correct.

Q. Referring once again to Government's Exhibit 389-A, would you be good enough to read for me the last entry in the journal on page 10 of that exhibit? A. Which do you want?

Q. The last notation in the journal. A. To record the liquidation of the corporation.

Q. Again? A. To record the liquidation of the corporation.

Q. To record the liquidation of the corporation? A. Yes.

Q. You owned Tivoli Trading Company lock, stock and barrel on March 27, 1947, save for a qualifying share held by Ellis Rosenberg, correct? A. I owned the corporation, but with reference to the qualifying share, I think that was assigned to Hannes & Company.

Q. For all practical purposes, Tivoli was yours? A. Yes.

The Court: It was assigned to you first, and [7947] then you assigned it to Hannes & Company, but the assignment from Rosenberg to you is undated, and your assignment to Hannes is dated.

The Witness: Yes, your Honor.

Q. At the time, March 27, 1947, let us say, when Tivoli Trading Company was for all practical purposes entirely

yours, Hannes & Company was also entirely yours, was it not? A. Yes.

Q. Hannes & Company had 15,000 shares of stock? A. I believe that it had more.

Q. Tivoli had 2850? A. Issued.

Q. Was Hannes & Company also a Panamanian corporation? A. Yes, sir.

Q. And as of March 27, 1947, Hannes & Company had never functioned? A. It had only been formed in April.

Q. And it was new and—— A. It was formed in February, I believe.

Q. It had not functioned for any purpose? A. From February to March, no, sir.

Q. At the time when you transferred the last [7948] million-odd dollars that was in the account of Tivoli Trading Company to Hannes & Company, Hannes & Company, up to that moment, had not functioned at all? A. No, sir.

Q. And why did you transfer the account of Tivoli or what was left in the account of Tivoli to Hannes & Company? A. In order to get a change in name. You can't do that in Panama, you have to liquidate a corporation. Liquidating a corporation requires the appointment by the Government of Panama of a public liquidator. It requires at least two years, I am told, or approximately thereabouts to liquidate the corporation by public notices being published in the Panamanian newspapers of any outstanding liabilities and so on, so that persons can be given notice that the corporation is liquidating. In order to accomplish the change of name from Tivoli to Hannes, the

only short-cut would be the formation of another company.

Q. In order to avoid the necessity for the liquidation of Tivoli, you transferred the assets to Hannes? A. By the method of stock.

Q. From one Panamanian corporation to another? [7949 7950] A. Yes, sir.

Q. Only because you wanted the change in name? A. Oh, no, because I wanted to activate that company.

Q. Was there any reason why the wholly-owned corporation, Tivoli, a Panamanian corporation, could not have served the same purpose that you may have intended for Hannes & Company? A. Maybe I like the name Hannes, sir.

Q. You say maybe you like the name Hannes better.

As a matter of fact, Mr. Klein, instead of it being your purpose to make this transfer because you like the name of Hannes better, isn't it a fact that you made this transfer, you liquidated or closed out the account of Tivoli for the sole purpose of denying Alprin, Roer, Koerner, Rosenberg, Rokoff, Silver and if I have left anyone out, all of the persons who subscribed stock?

The Court: Lechtzier.

Q. Lechtzier. All of the persons who subscribed for stock to the Tivoli Trading Company, to avoid any opportunity that they might have any recourse against any of the assets of Tivoli Trading Company? A. Oh, no, no, sir. You are entirely incorrect.

[7951] Q. That is your answer? A. That is my answer. That is positive, sir.

Mr. Donohue: I have no further questions.

The Court: Redirect.

Redirect Examination by Mr. Kiendl:

Q. Mr Klein, you recall in the course of your cross examination by Mr. Bauman having your attention directed to your income tax return for the year 1947 and particularly to that portion of it that has a notation on it:

> "The Collector has levied on all of the taxpayer's funds and for that reason he is unable to pay the balance due as shown by this tax return."

A. Yes, sir.

Q. You recall that. In that same document, your return for 1947, you show, do you not, in the schedule of long-term capital gains and losses that you had made a profit on a sale on the 20th day of January, 1947 of close to $5,000,000 on the sale of three blocks of securities? A. Yes, sir.

Q. And was it or was it not the fact that all your funds in bank accounts had been levied upon by [7952] the Government under the jeopardy assessments that had been served on you? A. Yes, sir, that is correct.

Q. Were all your funds in banks tied up as a result of that jeopardy assessment? A. Yes, sir.

Q. Now, during your cross-examination you were asked by Mr. Bauman regarding the placement of the order for 100,000 cases of Harwood's whiskey by Williams & Company under the contract between Williams & Company and Agencias. A. Yes, sir.

Q. Do you recall that? Mr. Bauman directed your attention, did he not, to a provision in that contract to the general effect——

Mr. Kiendl: May I have it, Exhibit 4?
May I withdraw that?

Q. To the last paragraph of the original agreement Mr. Bauman directed your attention. It reads:

"This agreement constitutes the entire understanding between the parties hereto and no amendments or changes thereof shall be valid and binding unless the same is in writing, signed by both of the parties hereto."

A. Yes, sir.

[7953] Q. Do you recall that? A. Yes, I do.

Q. Mr. Bauman asked you whether you had any——

Mr. Kiendl: Withdrawn.

Q. Mr. Bauman inquired about an oral arrangement or understanding you said you had with Williams & Company. Do you recall that? A. Yes, sir.

Q. And was it your testimony in answer to Mr. Bauman's question, in substance, that it was the policy of the suppliers not to enforce strictly the provisions of the contract calling for a number of cases of goods if the distributor was unable to sell them? A. That is what I said, sir.

Q. And did you have in mind the provision in the contract, itself, and the supplemental agreement regarding that?

Mr. Bauman: Pardon me, Mr. Klein.

Your Honor, I shall object to this leading of the witness beyond such questions as are necessary to direct the witness' attention to the area about which Mr. Kiendl is inquiring.

I object to this question and I shall object to any further leading upon that ground.

[7954] The Court: Sustained.

Q. When you answered Mr. Bauman's question about the 100,000 cases— A. Yes, sir.

Q. —do you know whether or not he called your attention to any provision of the supplemental letter? A. No, he did not.

Q. Government's Exhibit 5. A. No, he did not, sir.

Q. Regarding the liability of Williams & Company to place an order for $100,000 and live up to it? A. No, sir, he did not.

Mr Meagher: That is cases.

Mr. Kiendl: 100,000 cases.

Q. Now, I show you Government's Exhibit G-5, a copy of it, and call your attention to paragraph 3 of that letter of April 20, 1944.

Was that called to your attention by Mr. Bauman on your cross-examination? A. No, sir, it was not.

Q. And have you now refreshed your recollection from the letter contract, itself, as to the liability, if any, of Williams & Company? A. Yes, I have.

Q. To take 100,000 cases? A. No, their [7955] liability stopped at 12,500, if they couldn't then obtain letters of credit from their customers.

Q. Did you know that this letter, this supplemental agreement of April 20, 1944, Government's Exhibit G 5, contained this provision.

> "After the agent has accepted and paid for its own account for sales to retailers for 12,500 cases or 12-½ per cent of the total of all shipments by the supplier or its principal, whichever is greater, then and in such event the agent shall not be required to accept any further shipments. On all sales in excess of the above 12,500 cases or 12-½ per cent, which ever is greater, agent shall not be compelled to pay for the same unless and until the agent shall have received from its customer a sight letter of credit irrevocable for 90 days in favor of the agent."

A. Yes, sir.

Mr. Kiendl: May I have Exhibit 358?

Q. In connection with your income tax return for the year 1947, Government's Exhibit 356, do you recall Mr. Bauman inquiring about your office and place of residence during the year 1947 and when you filed [7956] this return in 1948? A. Yes, sir.

Q. You did then reside in Baltimore? A. Yes, sir.

Q. You had an office in Baltimore? A. Yes, sir.

Q. And when was it you contemplated coming to New York? A. Early part of 1947, sir.

Q. And was that the occasion when you had made the arrangements with Mr. Haas that you have already told us about? A. Yes, sir.

Q. Now, in your income tax return do you know whether or not it was disclosed that your federal income tax return for the year 1946 had been filed in the Collector's office in Baltimore, Maryland? A. Yes, sir.

Q. And you see that, do you not, now, on the very first page of that return, at the point that I have indicated? A. They all have that on them, sir.

Q. And it says, does it not, "If you filed a return for a prior year"——

Mr. Kiendl: This is awfully small type, your Honor.

[7957] The Court: I may have a larger copy of that. That is 358?

Mr. Kiendl: 358. I think I can make it out.

The Court: Just a minute. Let's see what I have here.

I don't agree on the number. 356 or 358?

Mr. Kiendl: 356. I have an enlarged copy of it.

The Court: All right.

By Mr. Kiendl:

Q. It says, "If you filed a return for a prior year what was the latest year? 1946.

"To which Collector's office was it sent? Baltimore, Maryland"

You know now that your income tax return for the year 1947 made that specific disclosure? A. Yes, sir.

Mr. Kiendl: Now may I have that other exhibit, 358, that I called for?

Q. Do you recall Mr. Bauman asking you on cross-examination about the opinion letter from Mr. Haas dated February 27, 1945, Government's Exhibit 358, and reading to you the last paragraph of that letter? [7958] A. Yes, sir.

Q. Is that the paragraph you answered Mr. Bauman was the one that was gratuitous; is that the one you referred to? A. That paragraph was gratuitous, yes, sir.

Q. Let me read it to you again:

> "Let me caution you for the second time, that the Treasury Department is not fully in accord with these principles and you may be required to resort to the courts to sustain them. Let me state further as a practical matter that if instead of just performing the functions I described above your president is in fact doing your business here, such as supervising the carrying out of your agreement with Williams, supervising the shipment of merchandise from Harwood to Williams, and caring for the multitude of details which must be involved in these transactions, then you are doing business here and subject to tax here. My opinion is based solely on the facts which have been given me and which I have outlined above."

That is the paragraph that Mr. Bauman referred to and read to you? [7959] A. That is, sir.

Q. Now, will you tell us whether or not it was the fact that during the period that we are concerned with you did supervise the carrying out of any agreement with Williams?

Mr. Bauman: Your Honor, I object to that question upon the ground that it is not within the the issues before the Court and jury at this time.

The Court: Overruled.

A. That is the reason I said it was gratuitous, sir, because I was not doing any of those things.

Q. Did you supervise the shipment of merchandise from Harwood to Williams during the period that we are concerned with? A. No, sir.

The Court: Mr. De Franco, I would suggest that you be less visible in your disapproval of my rulings.

Mr. De Franco: Sorry, your Honor.

Q. Now, do you recall being examined by Mr. Bauman regarding the business of Harvey & Company after the Harwood situation had come to an end? A. No. The only reference Mr. Bauman made was in connection with after the jeopardy.

Q. After the jeopardy assessment? [7960] A. That's right, March the 3rd, '48.

Q. You recall his asking questions about the volume of business that was done by Harvey & Company in certain years after that jeopardy assessment? A. Yes, sir, I do.

Q. You had testified on your direct examination, as I recall it, that Harvey & Company were doing business in name only after that jeopardy assessment. A. That's correct, sir.

Q. Do you still state that that is the fact? A. I do, sir.

Q. Do you know now how much money Harvey & Company made in the course of doing such business as it did after the jeopardy assessment and until the present time? Did it make money or lose money? A. Excluding a $50,000 severance payment received from Duncan Harwood & Company, that company lost $37,000-some-odd from the period of March—of January the 1st, 1948, up to July 31st of this year, sir.

Q. And what business did it do during that period? A. Thirty months it did no business, sir. From March the 3rd.

Q. What business did it do after the end of the thirty months? A. Because of a hiatus in the form [7961] of obtaining a new distributor for Harwood, Duncan Harwood asked us to take the item as a distributive item and with the consent of the Collector we were able to carry on our business.

Q. Did H. Harvey & Company, Ltd. do any business after the jeopardy assessment that was not done with the specific approval of the Government and under its jurisdiction? A. I wouldn't say it was done under the jurisdiction, sir, but it was done with its permission.

Q. And was there any business done without the permission of the Government during that period? A. No, sir.

Q. Now, you were asked about a loan that was made to Mr. Rosenberg of $15,000 in connection with Mr. Bauman's examination of you regarding the loan of $35,000 to Mr. Haas. A. Yes, sir.

Q. Do you recall that? A. Yes, I do, sir.

Q. And you testified that the two situations were different? A. That's correct.

Q. Will you tell us in what respect the two situations were different, the Rosenberg loan of $15,000 and the Haas loan of $35,000? A. Mr. Rosenberg was an employee, sir. Haas [7962] was not.

Q. And did you anticipate that the Haas loan would be repaid? A. No, sir.

Q. Did you anticipate that the Rosenberg loan would be repaid? A. Yes, I did.

The Court: We will take a fifteen-minute recess.

Mr. Kiendl: If your Honor please, I have but one more question and I might conclude my examination.

The Court: All right.

Mr. Kiendl: I say one more question if I can get one exhibit.

May I have the stock certificates.

Q. Mr. Bauman called your attention to the fact that the stock certificates of Tivoli were numbered; there were two number ones, or something of that sort. A. Yes, sir.

Q. I show you these stock certificates——

Mr. Bauman: Mr. Donohue did that.

Mr. Kiendl: Mr. Bauman.

Mr. Bauman: I believe Mr. Donohue. Your Honor, I am just trying to correct Mr. Kiendl's recollection. My recollection is that I did not do [7963] that.

The Witness: No.

Mr. Bauman: However——

Q. In any event, in the course of your cross-examination by either Mr. Donohue or Mr. Bauman your attention was directed to the numbers on some of these stock certificates? A. Yes.

Q. All I want to ask you, Mr. Klein, is to examine those stock certificates and tell us whether those numbers are there in typewriting in every instance. A. Yes, they are, sir.

Q. They are not printed? A. No, sir.

Mr. Kiendl: That is all I have, your Honor.

The Court: Fifteen-minute recess.

(Short recess.)

[7964] *Recross-Examination by Mr. Bauman:*

Q. You just told Mr. Kiendl on redirect examination, did you not, that the H. Harvey & Co. had lost money while it was operating in name only; is that right? A. No. I said over the period, sir, from 1948 to July 31, 1955.

Q. Over the period from 1938? A. From 1948.

Q. I beg your pardon, Mr. Klein. 1948 until 1955? A. Yes.

Q. Did it lose money in 1952, do you know? A. I don't recall.

Q. You knew during that period—during that year it paid you a salary of $85,000 or paid you $85,495? A. What year?

Q. 1952. A. No, sir, I don't think that is correct.

Q. Let me see if I can refresh your recollection, Mr. Klein, and correct me if I am wrong.

Did you during the year 1952 obtain from H. Harvey & Co., $85,495 (handing document)? [7965] A. That was a contract on a per-case basis.

Q. I merely asked did you in that year from H. Harvey & Co. receive $85,495. A. Yes, I did, sir.

Mr. Bauman: I have no further questions, your Honor.

Mr. Kiendl: We have nothing further.

Mr. Bender: I have nothing more.

Mr. Donohue: I have no further questions.

The Court: Mr. Kiendl?

Mr. Kiendl: Nothing further.

The Court: You are excused.

(Witness excused.)

The Court: Will counsel come to the bench, please.

(The Court and counsel confer at sidebar off the record.)

The Court: The jury is excused until 2.15.

(The jury retires.)

* * *

Afternoon Session, 2:15 o'clock P. M.

[8007] MARX S. KAUFMAN, called as a witness on behalf of the defendant Klein, being first duly sworn, testified as follows:

Direct Examination by Mr. Kiendl:

Q. Mr. Kaufman, where do you live? A. Baltimore, Maryland.

Q. And how long have you lived there? A. Twenty-eight years.

Q. And what business or occupation are you engaged in? A. I am in the advertising agency business.

Q. And how long have you been engaged in that business? A. About twenty-eight years.

Q. At any time were you in the employ of the FBI, the Federal Bureau of Investigation? A. I was.

Q. For how many years? A. For three years, 1942, '43 and '44.

Q. Do you know the defendant Hyman Harvey Klein? A. I do.

[8008] Q. How long have you known him? A. Since 1934.

Q. And have you known him well or only incidentally? A. I consider myself to have known him very well.

Q. And during the years that you have known him, have you heard his reputation discussed by other people in Baltimore? A. Yes, sir, I have.

Q. From time to time? A. I have.

Q. And have you discussed him with others from time to time, yourself? A. I have.

Q. And do you know his reputation for truth and veracity in the City of Baltimore, in the State of Maryland? A. I believe that I do.

Q. And what is his reputation for truth and veracity in that community? A. I believe that his reputation is of the highest.

Q. And do you know what his reputation is for honesty and fair-dealing? A. I believe that I do, sir.

[8009] Q. And what is his reputation for honesty and fair-dealing? A. I believe that it is high.

Mr. Kiendl: You may cross-examine.

Cross-Examination by Mr. Bauman:

Q. Mr. Kaufman, your advertising firm handled the advertising for Harwood Whiskey, did it not? A. That's correct.

Q. How long was your agency the advertising agency for Harwood Whiskey? A. From July 1, 1950 to June 30, 1953.

Q. And before that were you associated with any advertising firm that handled the advertising for Harwood Whiskey? A. Yes, I was.

Q. You were associated, were you not, with a man by the name of Theodore Newhoff, is that correct? A. That's correct.

Q. And what was the name of Mr. Newhoff's agency? A. Theodore A. Newhoff Advertising Agency.

Q. How long were you employed by or associated with that agency? A. I was associated with that agency from the time I resigned from the FBI, which would be September 1, [8010] 1944, until June 30, 1950.

Q. And during that period of time did that agency handle the Harwood account? A. That's correct, it did.

Q. You and Mr. Newhoff, then, were Mr. Klein's advertising men, is that correct? A. That's right.

Q. And then when you and Mr. Newhoff split—

A. That's right.

Q. —in 1951, was it? A. 1950.

Q. —1950—you took the account with you, is that right? A. That's correct

Mr. Bauman: I have no further questions.

Mr. Kiendl: That is all. Mr. Kaufman, thank you.

* * *

[8011] SAMUEL S. STROUSE, called as a witness on behalf of the defendant Klein, being first duly sworn, testified as follows:

Direct Examination by Mr. Kiendl:

Q. Mr. Strouse, where do you live? A. I live in Baltimore.

Q. In what business are you? A. I am in the advertising business.

Q. And were you in the advertising business with the preceding business? A. I am Mr. Kaufman's partner, yes.

Q. And you have been for how long? A. Since July 1, 1950.

Q. And during that time or part of it did you do the advertising for Harwood Whiskey? A. Yes, sir.

Q. For Mr. Klein? A. That's right.

Q. And how long have you lived in Baltimore? A. From birth, 1905.

Q. And how long have you known Mr. Klein? A. Since 1939.

Q. And during that time did you become familiar with his reputation in the community for truth and [8012] veracity? A. Yes, I did.

Q. And have you heard people discuss him from time to time? A. I have.

Q. And have you discussed him from time to time? A. Yes.

Q. With others? A. Yes.

Q. And will you tell us what his reputation is in the community for truth and veracity. A. Mr. Klein is regarded as truthful and as an honorable person, sir.

Q. Do you know his reputation for honesty and fair dealing? A. I do.

Q. What is that reputation? A. His reputation is good.

Mr. Kiendl: You may inquire.

Mr. Bauman: I have no questions of this witness, your Honor.

Mr. Donohue: I have no questions.

Mr. Bender: I have no questions.

* * *

JOSEPH H. A. ROGAN, called as a witness on behalf of the defendant Klein, being first duly sworn, testified as follows:

Direct Examination by Mr. Kiendl:

Q. Where do you live? A. Baltimore, Maryland.

Q. What is your business or profession? A. I am an attorney at law.

Q. How long have you been practicing your profession? A. 32 years.

Q. Have you during the 32 years at any time represented Mr. Klein as one of his attorneys? A. I have.

Q. For how long have you been one of his attorneys? A. I first represented Mr. Klein's company, the United Distillers, back in 1938, 1939, 1940, 1941 and 1942. Then about that time Mr. Klein operated his own business, the Harvey Company, and I represented the Harvey Company and Mr. Klein since that time, in the early 1940s.

Q. At any time did you hold a position as Chairman of the State Tax Commission? A. Yes, I was Chairman of the State Tax Commission [8014] of Maryland under Governor O'Connor from 1946 until June, 1951, when my term expired.

Q. During the period that you represented Mr. Klein or any of his companies did you get to know him pretty well? A. Real well.

Q. Did you get familiar with his reputation in Baltimore? A. I certainly did.

Q. Did you talk to people who commented about his reputation? A. I certainly did, and they talked with me.

Q. And they talked with you? A. Yes.

Q. What was his reputation for honesty and fair dealing in that community? A. Excellent.

Q. What is his reputation for truth and veracity? A. Very, very high.

Mr. Kiendl: You may examine.

Cross-Examination by Mr. Bauman:

Q. Mr. Rogan, you say you have represented Mr. Klein for a very substantial period of time, is that right? A. That is true; he or his companies.

Q. When was the last time that you performed a legal service for Mr. Klein? A. The last time I [8015] per-

formed a service for him was about two months ago when I had a matter with the district attorney of Maryland with regard to a customs case.

Q. I did not ask you what the matter was. I asked you when was the last time that you performed a legal service for him? A. Two months ago.

Q. In addition to having acted as counsel for Mr. Klein or his companies, Mr. Rogan, you were also vice-president of H. Harvey & Company, isn't that correct? A. That is true.

Q. During what period were you a vice-president of H. Harvey & Company? A. I believe it began back in 1945 or 1946, up until the present time.

Q. Do I understand that while you were Chairman of the State Tax Commission of Maryland you were a vice-president of H. Harvey & Company? A. That is true.

Mr. Bauman: I have no further questions.

Mr. Kiendl: Thank you, Mr. Rogan.

The Court: Just a moment, please, Mr. Rogan. Is there anything in the laws of Maryland that prohibited you from being vice-president of a corporation at the [8016] time you were Chairman of the State Tax Commission?

The Witness: Not at all, your Honor.

The Court: All right.

(Witness excused.)

The Court: I am assuming that no cross is desired by the defendants Alprin and Haas because they made no statement.

Mr. Donohue: That is correct, your Honor.

Mr. Bender: That is correct.

* * *

[8016] H. EDMUND LEVIN, called as a witness on behalf of defendant Klein, being first duly sworn, testified as follows:

Direct Examination by Mr. Kiendl:

Q. Do you live in Baltimore? A. Yes.

Q. You practice the medical profession in that City? A. I do.

Q. And have for a number of years? A. Since 1926.

Q. In addition to practicing medicine, have you taught in any of the institutions? A. I taught at Hopkins for about—I taught there from about 1928 to about 1946, and I have been at [8017] the University of Maryland since 1928.

Q. And do you know the defendant Hyman Harvey Klein? A. I do.

Q. How long have you known him? A. Since 1934.

Q. How well have you known him? A. Very intimately.

Q. Do you know people who know him? A. I do.

Q. Have you discussed him with people in Baltimore from time to time? A. I have.

Q. Have they discussed him with you from time to time? A. Yes.

Q. Have you been able to form an opinion as to his reputation in the community for honesty and veracity? A. I have.

Q. For truth and for fair dealing? A. Yes.

Q. What is his reputation? A. It is excellent in all respects.

Mr. Kiendl: You may cross-examine.

Mr. Bauman: I have no questions.

Mr. Bender: No questions.

Mr. Donohue: No questions.

[8018] The Court: Thank you, Doctor.

(Witness excused.)

* * *

CARL F. GAIL, called as a witness in behalf of defendant Klein, being first duly sworn, testified as follows:

Direct Examination by Mr. Kiendl:

Q. Mr. Gail, you are in the insurance business? A. Yes, I am president of the Gilbert A. [illegible] Company, Inc.

Q. You said you were president of that company? A. Yes.

Q. You have been in the insurance business all your adult life? A. Since 1920.

Q. Have you done insurance work for Mr. Klein? A. I have.

Q. And his companies? A. I have.

Q. How long have you known him? A. I met Mr. Klein the first week he came to Baltimore, because I handled the account of his predecessor.

Q. You have had business contact and social contact with him ever since? A. Ever since.

Q. Do you know people who have known him? [8019] A. Yes.

Q. You have heard people discuss his reputation? A. I have.

Q. Can you tell us what is reputation for truth and veracity is? A. Very good, excellent.

Q. What is his reputation for honesty and fair dealing? A. Above reproach.

Mr. Kiendl: You may cross-examine.

Mr. Bauman: I have no questions of this witness.

The Court: Thank you, sir.

(Witness excused.)

Mr. Kiendl: That is the defendant Klein's case, your Honor.

Mr. Bender: I will call Maurice Haas, your Honor.

* * *

MAURICE A. HAAS, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Bender:

Q. Mr. Haas, you are the Maurice Haas who is named as a defendant in this fifth count? A. I am.

Q. How old are you? A. 58.

[8020] Q. Were you educated in the State of New York? A. Yes, I was.

Q. Where did you go to college? A. New York University.

Q. Did you graduate from New York University? A. Yes, I did.

Q. Did you thereafter go to any further school? A. New York University Law School.

Q. Did you graduate from there? A. Yes, I did.

Q. When did you graduate from the Law School? A. 1924.

Q. Did you receive a degree of Bachelor of Laws? A. Yes, I did.

Q. Were you admitted to practice in the State of New York subsequently? A. Yes, sir.

Q. Do you recall about when you were so admitted? A. February, 1926.

Q. And you have been a member of the bar in good standing since that date? A. Yes, I have been.

Q. Were you also licensed to practice as an accountant in the State of New York? A. As a certified public accountant.

[8021] Q. When did you become a certified public accountant? A. In May, 1920.

Q. You have been in such status up to the present time? A. Yes, I have.

Q. When did you begin the practice of accountancy? A. Sometime in September, 1916.

Q. Subsequent to that time did you form a firm? A. Yes.

Q. What was the name of that firm? A. Haas & Schlesinger.

Q. And is that Julius Schlesinger? A. Yes.

Q. Thereafter did you enlarge that firm name? A. Yes.

Q. To what? A. Haas, Schlesinger & Mayers.

Q. Do you recall about when? A. About 15 years ago.

Q. Was that an equal partnership? A. Yes, it was.

Q. In addition to your license to practice as a certified public accountant——

The Court: Excuse me a moment. I am sorry to interrupt. Was your last question, was that a legal partnership?

Mr. Bender: Equal partnership.

[8022] The Court: Thank you, I misunderstood you.

Mr. Bender: I am sorry, your Honor.

Q. By equal, was that a partnership where you divided the profits? A. One-third each.

Q. In the accounting firm, profits made from the accounting firm? A. Yes.

Q. In addition to your license as a certified public accountant and your license to practice law, did you have an additional license with regard to Treasury practice? A. Yes, I had a Treasury card permitting me to represent clients before the Treasury Department.

Q. What is that? A. That is sort of a permit that is issued by the Treasury Department to make sure that qualified men represent taxpayers before its bureaus.

Q. You had such a license, did you? A. Yes, I had and I have.

Q. You call that a Treasury card? A. Yes.

Q. And that Treasury card entitled you to practice before the Treasury Department in matters relating to taxes, is that correct? A. Correct.

Q. Are you a member of any professional societies? [8023] A. Yes, I am.

Q. Will you tell us what they are. A. The New York State Society of Certified Public Accountants and the American Institute of Accountants.

Q. Could you keep your voice up, Mr. Haas, please. In addition to your membership in your professional societies—I withdraw that.

Have you also done some civic work of one kind or another? A. Yes, I have.

Q. What have you done? A. Prior to the start of this case I was Chairman of Selective Service Draft Board No. 10, which covered most of Lower Westchester County, was vice-president of the Free Synagogue of Westchester, was a member of the Board of Trustees of the Mount Vernon Hospital, a member of the Board of Trustees of the Y. M. H. A. and Y. W. H. A. of Mount Vernon, and a member of the board of directors of the Mount Vernon Chapter of the Zionist Organization of America, a member of the Community Chest of Mount Vernon.

Q. As a result of the indictment in this case did you retain those memberships? A. No, I gave up all my civic work.

Q. You voluntarily resigned? A. Yes, I did.

[8024] Q. Until this matter was determined? A. I resigned.

Q. How extensive has your accounting and tax experience been in the firm in which you were a partner? A. I have handled practically every type of auditing and accounting and have been practicing law ever since the first tax law was passed in this country.

Q. In relation to your firm, did you occupy any status as a tax consultant? A. Yes, I was the tax man of our firm.

Q. Can you explain briefly the type of work that your accounting firm engaged in as a general matter over these

years? A. It was divided into several types. We had monthly, quarterly, semiannual audits. We had special examinations, where a client would want to buy into another business, we would examine that business. We handled the tax returns of all kinds, income, excise and every type of tax return that is now assessed against businesses and individuals.

Q. Would you have anything to do with limited engagements, retainers of one kind or another? A. Those are special retainers of all kinds. We could be called upon to prepare a tax return for some- [8025] body who is not our client. We could be called upon to represent an individual whose tax return was prepared by others, who was having a problem before the Treasury Department. We could be called upon to prepare financial statements of one kind or another, depending upon the type of retainer.

Q. Were there any retainers where you had to verify certain special reports which you would have to undertake where you didn't have to verify them? Do you understand my question? A. Yes. There are two types of financial reports which a certified public accountant can issue, one is a certified statement where practically every item on the statement is verified by some independent verification. Then there is a statement or report which is given to a client for his own personal use. It depends upon whether the figures are to be used by a client personally or whether it is going to go to any member of the public, such as a stockholder or a creditor. In the latter two cases, the verification is made from independent sources. If it is just for the use of the client, there is no verification made.

Q. You have done all types, have you not? A. Yes, I have.

[8026] Q. Over the years? A. Yes.

Q. I suppose whether you did verify or whether you did make an audit would depend upon your retainer agreement with the particular client? A. That's right.

Q. When did you first meet Morris Alprin?

The Court: May I interrupt.

Did you also engage or were you retained to render opinions as to the taxability of given situations?

The Witness: Yes, I was.

The Court: You may continue.

Q. When did you first meet Morris Alprin? A. I met Mr. Alprin sometime in 1937.

Q. And do you recall who introduced you to Mr. Morris Alprin? A. My partner, Mr. Schlesinger, who had known him for some time before that.

[8027] Q. Now, from 1937, which is about the date when you were introduced to Mr. Alprin, to about the early part of 1944, was your firm called upon by Morris Alprin to engage in any kind of accounting work for them? A. Yes, we were.

Q. And did you receive any accounting work as a result of any recommendations of Morris Alprin? A. Tax work mostly.

Q. Tax work? A. Yes.

Q. And how frequently was that, do you recall? A. I wouldn't recall that.

Q. But there was such work done on his recommendation?—A. Oh, yes.

Q. When was the first time that you were called upon to render an opinion, a tax opinion in this Harwood situation? A. In April of 1944.

Q. And, briefly, what happened on that occasion? A. A. I recollect it, Mr. Alprin, called me on the telephone and told me that he had a client that was going into business, that was negotiating a contract [8028] with respect to that business, and he asked me if I would be willing to give him a tax opinion as to the taxability of the transaction into which his client was about to enter.

I told him that I would, and I asked him to send me a copy of the proposed agreement.

Q. Did he do so? A. Yes, he did.

Q. We have had several proposed agreements which were marked in evidence in the case. Do you have any recollection as to which one of those exhibits was anything like the proposed agreement that he sent you? A. I would like to compare them, Mr. Bender. I haven't seen the exhibits in evidence.

Q. I am going to show you what is Government's Exhibit 2-A in evidence, and I am going to show you another instrument which I should like you to look at, and see whether by looking at the instrument that I have just given you, and Exhibit 2-A, whether you can give me an answer to my last question. A. Those are both alike.

Q. Would you say that to your best recollection the proposed agreement between Agencias Destiladores [8029] and R. C. Williams, which was sent to you by Mr. Alprin,

appears to be Government's Exhibit 2-A in evidence? A. Yes, I would.

Q. What did you do after that, Mr. Haas, in connection with the opinion that you were preparing? A. After reading the proposed agreement I consulted the authorities and prepared a draft of an opinion as to the taxability of that proposed transaction.

Q. Did Mr. Alprin or anybody help you in connection with the preparation of your opinion? A. No, they did not.

Q. Did Mr. Alprin or anyone suggest any conclusion that you should come to in arriving at a determination? A. No, sir.

Q. It was your own honest opinion, based upon your own research? A. Yes, it was.

Q. And did you thereafter prepare such an opinion? A. I prepared a draft of an opinion, of the opinion, first.

Q. And what happened? [8030] A. I called Mr. Alprin and asked him to drop in to my office to read it. He came in and he did read it. He then asked me if I would, in addition, make such recommendations as to changes in the proposed agreement so as to conform the transaction to the law. I agreed to do that and I did do that and on April 17th, I believe, I sent him an agreement including those proposed changes.

Q. I take it these recommendations you made in the proposed provisions of the draft agreement were to conform them with your interpretation of the cases and the statutes contained in your opinion. A. That's right.

Q. Now I show you Government's Exhibit 8. Is this the opinion you finally rendered? A. Yes, sir.

Q. And what did you do with the opinion? A. I either mailed it to Morris Alprin or I delivered it to him personally. I don't recollect which.

Q. And how much did your firm receive in payment for the services rendered in connection with that opinion? A. Two hundred dollars.

[8031] Q. Did you have anything to do with the negotiations between the parties in connection with the execution of the agreement? A. No, sir, nothing.

Q. This is all that you had to do in 1944 with this situation? A. That's correct.

Q. In 1945 did you receive a telephone call from Mr. H. H. Klein? A. Yes, I did.

Q. Tell us what was said. A. Sometime in the early part of 1945 Mr. Klein called me on the telephone and introduced himself to me over the telephone and told me that he would like the privilege of either calling or writing to me from time to time for tax advice or any other kind of advice which he needed at the moment; that he didn't want to have me send the bill each time I got a phone call from him or wrote him a letter, and he asked me if I would accept the retainer of $500 for that service for the year 1945, and I agreed to accept that retainer.

Q. And did your firm receive such check? A. Yes, the firm did.

Q. Were you thereafter called upon to render [8032] another opinion in connection with the Harwood situation? A. Yes, I was.

Q. About when was that? A. In February 1945.

Q. And who asked you to render such an opinion? A. Mr. Alprin.

Q. And what did he say to you? A. Again, I think it was a telephone call in which he reminded me about the opinion I had rendered in 1944. He told me that his client had now been operating for some months, gave me certain facts which I have summarized in the first paragraph of the written opinion, and asked me if I would give him a further opinion as to whether there was any change in my ideas in 1944.

I asked him to send me a copy of the complete contract and when I received it, again reviewed the authorities, prepared an opinion, which I sent.

Q. And did he send you a copy of the complete contract? A. Yes, he did.

Q. I show you Government's Exhibit 4 in evidence. Would you take a look at that and see whether or not [8033] that is the contract that you received.

A. Well, I received a typewritten copy, not a photostatic copy.

Q. Yes, I see. Well, are you unable at this time by looking at Government's Exhibit 4 to answer the question, Mr. Haas? A. I would prefer to see the copy that was sent to me.

Q. Do you have that? A. I think you have it.

Q. Well, I show you this instrument, Mr. Haas. Will you take a look at it and while looking at this will you look at Government's Exhibit 4 in evidence and see whether or not you can answer the question. A. Yes, the instrument that Mr. Alprin sent me is a conformed copy of Government's Exhibit 4.

Q. You say it was Mr. Alprin who called you in regard to the second opinion? A. Yes, it was.

Q. And you say the substance of what he told you was embodied in the first paragraph of your written opinion? A. Yes.

Q. You didn't discuss with Mr. Klein the [8034] preparation of your second opinion, did you? A. I did not.

Q. You didn't talk with him at all about that? A. No, sir.

Q. I show you this piece of paper. Can you identify that? A. This was attached to the instrument which I just looked at, the conformed copy of Government's Exhibit 4.

Q. Which you received from Mr. Alprin? A. Which I received from Mr. Alprin.

Q. And in whose handwriting is that? A. Mr. Alprin's.

Q. And what did you do with the written opinion that you prepared? A. I addressed the opinion to Agencias Destiladores and sent it to Mr. Klein in Baltimore.

Q. You hadn't done that with your first opinion, had you? A. No, I had not.

Q. And why did you send the second one to Agencias Destiladores? A. Those were the instructions I received from Mr. Alprin.

[8035] Q. Now I show you Government's Exhibit 358, and ask you whether that is the second opinion that you just testified to. A. Yes, it is.

Q. Did you receive any compensation for the opinion you rendered as reflected in Government's Exhibit 358 in evidence? A. No. That was part of the retainer that I agreed upon with Mr. Klein.

Q. When was the first time, Mr. Haas, that you met H. H. Klein? A. To the best of my recollection, sometime in the latter part of 1946.

Q. Before I get to that, did you in the year 1945 render another opinion in connection with the Harwood situation? A. Yes, I did.

Q. Can you tell us about that? A. Mr. Alprin wrote me a letter, told me that a law had been passed in the State of New York, called the Feld-Crawford Act, and asked me whether that law would in any way revise my opinion with respect to the taxability of the Agencias contract.

Q. I show you this letter and an attached copy of another letter. Can you identify that? [8036] A. Yes, sir. This is the letter that I received from Mr. Alprin and the attached copy is my reply.

Mr. Bender: I will offer it in evidence.

May I offer both, your Honor, the original letter from Mr. Alprin and the copy of the letter from Mr. Haas to Mr. Alprin as one exhibit?

Mr. Bauman: The Government has no objection to the exhibit which is now being offered.

Mr. Kiendl: Defendant Klein has no objection.

Mr. Donohue: Defendant Alprin has no objection, your Honor.

(Received in evidence as Defendant Haas's Exhibit FD.)

[8037] Mr. Bender: With your permission, may I read this to the jury?

The Court: Surely.

(Mr. Bender read Defendant Alprin's Exhibit FD to the jury.)

Mr. Bender: I would like at this time to offer in evidence this memorandum sheet which Mr. Haas has identified to be in the handwriting of Mr. Alprin.

Mr. Bauman: No objection, your Honor.

Mr. Kiendl: We have no objection.

Mr. Donohue: The defendant Alprin has no objection.

(Marked Defendant Haas' Exhibit FE.)

Mr. Bender: May I read this to the jury, your Honor?

The Court: Surely.

(Mr. Bender read Defendant Haas' Exhibit FE to the jury.)

The Court: There will be a ten-minute recess.

(Short recess.)

By Mr. Bender:

Q. Mr. Haas, the defendant Haas' Exhibit FE, which you have identified to be the note that Mr. Alprin [8038] sent you together with the final agreement, Government's Exhibit 5—no, Government's Exhibit 4, he says that you should send your bill addressed to Agencias but mail it to H. H. Klein. Did you send such a bill? A. No, I had never told Mr. Alprin of my conversation with Mr. Klein over the telephone in 1945.

Q. You mean with regard to his having retained you? A. With regard to the retainer.

Q. So actually you did not send any bill? A. No, I sent no bill.

Q. You considered this as part of the retainer in the sum of $500 that you had received in the early part of 1945? A. Yes, I did.

Q. I started to ask you a moment ago when for the first time did you actually meet H. H. Klein. A. To the best of my recollection it was the latter part of 1946.

Q. Can you tell us under what circumstances you met him? A. I don't know whether I got a telephone call or a letter from him asking me to come down to Baltimore to see him, but in either event I made an appointment with him and did go down to Baltimore to his office at 10 Light Street.

[8039] Q. Did you have a conversation with him at that time? A. Yes, I did.

Q. To your best recollection was that the first time you met H. H. Klein? A. Yes, that is the best of my recollection.

Q. Was that the first time you had been in Baltimore at his office? A. Yes.

Q. Prior to the time that you met him in Baltimore in the fall of 1946, had you had another conversation with him in 1946? A. Yes, I received a telephone call from him in January, 1946. He told me that he had not received a retainer bill from me for the year 1946. I told him I didn't know whether he wanted to retain us for the year 1946. Our last conversation was about the year 1945. He said

he did and wanted to know if the same amount would be agreeable, and I said it would. He asked me to send him a bill and I did.

Q. Did he send you a check in that amount? A. He sent the firm a check for $500.

Q. That was for a retainer for such tax advice as he might seek in the year 1946? A. That's right.

Q. Rather briefly could you tell us what your conversation with Mr. Klein was in Baltimore when you [8040] met him for the first time in 1946?

Mr. Bauman: I object to "rather briefly". I ask that the question be answered in its entirety, the entire conversation with relation to the point Mr. Bender is now talking about.

The Court: I am afraid that that objection is entirely unwarranted. He is permitted to give any portion that he chooses and when you take him on cross-examination you can develop the details. However, I don't think I can tell him the extent or the quantum of evidence he wants to give in his case.

Overruled.

A. Mr. Klein told me at that time that the Harwood business was about over and he was anxious to find out what his share was in all of these corporations. He asked me if I could figure that for him. I said I thought I could, and he handed me a worksheet, and he said, "These are just temporary figures. Can you roughly tell me how much my share of this business is worth?" On a piece of scratch paper I figured it out for him. He then told me later on

in the year he expected to have final figures and would be in touch with me again.

[8041] Q. Did you thereafter receive final figures from Mr. Klein? A. Yes, I did.

Q. And do you have any recollection, Mr. Haas, about when? A. It was about the middle of December 1946.

Q. Where? A. In his office in Baltimore.

Q. And how did you get there, pursuant to a telephone call from him? A. Either a telephone call or a letter. I am not sure.

Q. And in what form were these final figures? A. He handed me trial balances, balance sheets, profit and loss statements of various companies.

Q. And were those the trial balances which are Government's Exhibit 381 in evidence? A. Yes, I have seen those.

Q. And, specifically, what if anything did Mr. Klein ask you to do? A. He asked me to prepare for him a statement as at December 31, 1946, from these figures, so that he might compute what his final share in this venture was.

[8042] Q. Was any indication made to you as at what period such a computation should be made? A. As at December 31, 1946.

Q. Did you thereafter make such a computation? A. Yes, I did.

Q. And where did you make such a computation? A. In my office.

Q. At either or both of these occasions in 1946, when you were in Baltimore, did you examine any of the Cuban and Panamanian books of account? A. No, sir, I never saw them.

Q. In particular, these memoranda records which have been introduced in evidence here. A. I never saw them.

Q. Were you asked by Mr. Klein to examine those books and records? A. I was not.

Q. Now, in the course of the preparation of the computation that you spoke about, did you discuss that with Mr. Klein at all? A. No, there was no need to. He wanted his figures prepared from these sheets, Exhibit 381.

Q. And you did prepare such a computation? A. Yes, I did.

[8043] Q. And was that the consolidated balance sheet that has been marked here in evidence as Government's Exhibit 371? A. Yes, it is. I have seen that.

Q. Before you completed Government's Exhibit 371 did you first do a pencil draft of it? A. Yes, I did.

Q. Suppose you keep this in front of you, Government's Exhibit 371. How long did it take you to do the pencil draft? A. Two or three hours.

Q. And do you recall about when you finished it? I am talking about the pencil draft. A. Either the latter part of December of '46 or immediately after the turn of the year in '47.

Q. After you finished the pencil draft, what did you do? A. I held it until Mr. Klein came to my office in the early part of 1947.

Q. And what happened then? A. I showed him the pencil draft that I had prepared.

Q. And did you have a conversation with him? A. Yes, I did. He examined the pencil copy [8044] and he said to me there was something wrong, that the statement

that I had prepared did not show a loan from Regan Potter to Tivoli Trading, so I took out his trial balances, Government's 381, and showed him that it didn't appear on the trial balances, and I had merely transcribed these trial balances on to a statement.

He told me that the trial balances were wrong, that evidently Rokoff had made an error and had charged that loan of $1.5 million to commissions paid. He asked me to correct it on my statement and I corrected it. I had the statement prepared, and that is this Government's 351.

Q. 371, I think. A. 371, yes, sir.

Q. As I understand you, Mr. Klein said that the $1.5 million had been included by Mr. Rokoff in the commissions paid trial balance of Regan Potter. A. Yes.

Q. Instead of having inserted the $1.5 million as a loan receivable in Regan Potter. A. That's right.

Q. Did he explain anything further about how that mistake could have come about? A. No, he did not explain anything further.

[8045] Q. And you did as Mr. Klein asked you to do? A. Yes, of course.

Q. Did Mr. Klein advise you for that purpose he wanted you to prepare this computation which is Government's Exhibit 371 in evidence? A. He wanted it for his own personal use in order to compute what his share of this entire business was.

Q. And you thereafter typed up or caused the report to be typed? A. Yes, I did.

Q. And in accordance with your retainer, without audit, and on information submitted by Mr. Klein, you forwarded Exhibit 371 to Baltimore, is that correct? A. That's correct, yes.

Q. How long did you say it took you to do that job? A. Two or three hours.

Q. And did you send Mr. Klein a bill for that? A. No, I did not. I think—I figured that was part of the 1946 retainer that I had received.

Q. Was there in the conversations that you had with Mr.——

Mr. Bender: I withdraw that.

[8046] Q. Did there come a time when you had a conversation with Mr. Klein with regard to him using the facilities of Haas, Schlesinger & Mayers? A. Yes, there was.

Q. And do you recall about when that conversation took place? A. The early part of January 1947.

Q. And do you recall where it took place? A. In my office.

Q. And will you tell us what happened. A. Mr. Klein was in my office and told me that he was planning to move the executive offices of his business to New York and that he was planning to move his residence to New York, that he was finding some difficulty in getting space, and asked me if I would object if he used my office as a mailing address and a place where he could meet people.

I was delighted to have him there, and I of course told him that I would discuss it with my partners, which I did, but they also were glad to have him there, and we told him that there would be no objection.

Q. Did you make your office available thereafter to Mr. Klein? [8047] A. Yes, I did.

Q. To the best of your recollection, Mr. Haas, how often would you say Mr. Klein would use your office? A.

Well, he came in once a week throughout the year except for that period of time that he went on vacation; sometimes he might skip a week, but generally once a week.

Q. Did your firm have anything to do with putting his name down on the bulletin board in the lobby of your building? A. Yes, sir. We requested the office of the building to place his name on the directory in the main lobby of the building.

Q. Who else besides Mr. Klein would come in—— withdrawn.

Did anybody else besides Mr. Klein come in on occasion with Mr. Klein to use your office? A. Yes. Mr. Rosenberg came in almost as frequently as Mr. Klein, and in addition, Mr. Silver and Mr. Rokoff used to come in occasionally.

[8048] Q. And what facilities if any were used by Mr. Klein and Mr. Rosenberg in your place, to your knowledge? A. In the first place, he had some place to sit. That was in my private office. He had a place to receive his mail. I offered him telephonic and stenographic services of the office.

Q. Did Mr. Klein use the stenographic services of the office? A. He primarily used the telephone. Mr. Rosenberg was the one who used the stenographic services.

Q. How long did Mr. Klein take advantage of your kindness? A. He wasn't taking advantage; he used these facilities, I think, until he moved to California.

Q. You mean you were not being kind? A. Until the latter part of 1950.

Q. Weren't you being kind, did you say ? A. No.

Q. You were rather delighted to have him there? A. Yes, we were.

Q. Why? A. Every professional man likes to have a good client as close to him as he can get him.

[8049] Q. Provided the sort of things doesn't happen that happened to you?

Mr. Bauman: I move to strike that out your Honor.

Mr. Bender: I withdraw it, your Honor.

Q. However, in any event, you think that Mr. Klein used your offices until 1950 or 1951? A. I think either in 1950 or 1951, I am not sure which.

Q. You had a conversation with regard to this La Ribera situation with Mr. Klein, did you not? A. Yes, I did.

Q. To the best of your recollection, Mr. Haas, when did this conversation take place? A. I wouldn't want to designate it as the La Ribera situation. Sometime in February 1947 after one of the visits that Mr. Klein made to my office he told me that since he was finished with the Harwood venture he was going to continue in business, and that he would like to have our firm have the opportunity of making some money in the business, that he was going to have Mr. Roer transfer one of his corporations to me, or to us, and we wouldn't even have to put any capital in, that he would make a loan to that corporation, [8050] throw business into it, and when sufficient money had been accumulated, we could repay the loan to him.

Q. Did you like that idea? A. Oh, yes, I was very happy about it.

Q. When you did the consolidated balance sheet, Government's Exhibit 371, you became aware of the fact that

the corporations in the Harwood venture had made a lot of money? A. Oh, yes.

Q. Then what happened with regard to this conversation that you had? A. Sometime in February Mr. Roer transferred this La Ribera corporation to us and I was asked by Mr. Klein to come down to see him in Baltimore, which I did.

Q. Before you get to this conversation with Mr. Klein in Baltimore, did you buy the corporation from Mr. Roer or was it given to you? A. We bought it for $800.

Q. When you say "we" what do you mean? A. My two partners and I.

Q. How was it paid? A. We paid for it in cash, because that is the way Mr. Roer wanted it.

Q. What was your share of the $800? [8051] A. A little over $250.

Q. Was that the share of Schlesinger and Mr. Mayers, your partners? A. Yes.

Q. And what did you do with the $800? A. Gave it to Mr. Roer.

Q. And you received a corporation? A. Yes, I received the papers.

Q. You received the papers? A. Yes.

Q. Who were the stockholders of the corporation? A. Before?

Q. After it was transferred to you. A. Mr. Schlesinger, Mr. Mayers and myself were equal stockholders.

Q. And then you went to Baltimore and had this conversation with Mr. Klein? A. I went to Baltimore at Mr. Klein's invitation, and at that time I don't remember that I told him the name of the corporation Roer had transferred

to me or whether Roer told it to him. One of us did. And he had a check made out from Tivoli Trading Company to that corporation for $35,000.

Mr. Bauman: May I interrupt long enough [8052] to have that last answer read?

The Court: Read the answer.

(Answer read.)

Q. Who was the check made payable to? A. Compania Comercial La Ribera, S. A.

Q. That was the name of the corporation that Roer had transferred to you and your two partners? A. Yes.

Q. Did you have any further conversation with him? A. Yes.

Q. At the time that he gave you this check? A. Yes. He asked me to deposit that check in Canada and hold it until such time as he was ready to start the business.

Q. That was the sum and substance of your conversation with Mr. Klein at that time? A. The substance of it, yes.

Q. Thereafter, did you go to Canada with the check? A. Yes, I did.

Q. About when did you go to Toronto? A. A week or two later, maybe three weeks, I don't exactly remember.

[8053] Q. Incidentally, when you got that check and you came back to New York, did you show it to your partners? A. I certainly did.

Q. Did you open an account in Toronto in the name of La Ribera? A. Yes, I did.

Q. What happened when you attempted— withdrawn. Were you able to open an account in the name of La

Ribera at the Royal Bank in Toronto? A. After I had conformed to Canadian banking regulations, of which I was informed by the manager of the bank. He told me that when a corporation—a foreign corporation had deposits or a bank account in Canada, the Canadian banking regulations required a resident Canadian to be one of the officers so that he could receive communications from the bank, and I had a cousin living in Toronto, and I got in touch with him and asked him if he would act in that capacity for me and he said he would and I opened the account.

Q. What was his name? A. Michael M. Davis.

Q. So, for the purpose of the banking regulation in Canada, he became an officer of La Ribera? A. That's right.

[8054] Q. Was that his sole function? A. That is the only function he ever had.

Q. He introduced you to the bank? A. He knew the manager, and I had a formal introduction through him.

Q. And you opened the account? A. Yes.

Q. And you did what with the check? A. Deposited it.

Q. You deposited the $35,000 in that account? A. Yes.

Q. About what date was this? A. It must have been the middle of March 1947.

Q. What happened with that account and that check? A. In May of 1947 it was frozen by the Canadian Government.

Q. Did it remain in Canada during the period of time that it was frozen? A. Yes.

Q. When was it unfrozen to your knowledge? A. In February of 1949.

Q. What did you do when you learned that it was unfrozen? A. I was with Mr. Klein at one of his visits to [8055] my office. I told him that the account was now available again, although that was superfluous, although he knew it was. He asked me what I wanted to do with it, and I offered him a check in repayment. By that time I knew there wasn't going to be another business for some time.

Q. How did you know that? A. In my conversations with Mr. Klein during the previous year, after his jeopardy assessment, I knew he was not going to go into business until his tax matters were completely cleared up.

Q. What did Mr. Klein say to you when you offered him the check back? A. He told me to keep the check, he didn't want any part of it.

Q. Did you remonstrate with him? A. I certainly did not.

Q. Was there anything said to you about that time about services that you might render to him? A. No, sir.

Q. What did you do then with the check? A. I thanked him and told my partners about it and divided the check up among the three of us, $11,000 and some change each.

[8056] Was that the first time after you deposited the check that the check was available to you and your partners? A. Yes, February 1949.

Q. What if anything did you do with the question of tax on that amount that you had received? A. My partners

and I each reported it on our 1949 income tax returns as a capital gain.

Q. Did you list that it was an acquisition and sale of stock of Compania Comercial La Ribera? A. Yes.

Q. When did you file that return? A. 1950.

Q. Did your partners do likewise? A. Yes, they did.

Q. And you subsequently—and when I say you, I mean your firm—were paid substantial fees for services that you rendered subsequent to 1947, isn't that correct? A. That's correct.

Q. In 1951 did your firm receive a fee in the sum of $25,000? A. Yes, we did.

Q. Was that for services rendered by your firm [8057] to Mr. Klein and H. Harvey Co.? A. Yes, it was.

Q. You, thereafter—and when I say you I mean your firm—received an additional fee, did you not? A. Yes.

Q. How much was that? A. $25,000.

Q. So that you received $50,000 for work that you had performed for Mr. Klein and the H. Harvey Co., subsequent to 1947? A. We received regular audit fees besides.

Q. Besides that you received the regular audit fees? A. Yes.

Q. Were any of the services that you rendered paid for by the $35,000 which was loaned to La Ribera by Tivoli Trading Company? A. No, sir.

Q. Did Mr. Klein at any time subsequent to 1947, when your firm rendered these additional services and billed them these substantial amounts, ask you to consider that he had paid you $35,000 previously? A. No, sir.

[8058] Q. Your bills in no way took that into account? A. No, sir.

Q. You never at any time subscribed to any stock of Tivoli Trading Company, did you? A. No, I did not.

Q. Did your partners? A. I am sure they didn't either.

Q. You never received any liquidating dividend of Tivoli, did you? A. No, sir, we did not.

Q. On what basis did you and your partners report this $35,000 as a capital gain? A. It was a liquidation of Compania Comercial La Ribera, of which we were the stockholders, and a liquidation of a corporation is a capital gain to the stockholders or a capital loss, if you lose money.

Q. At the time that you received the $35,000, the $35,000 Tivoli check, did you examine the Tivoli books in any respect to see in what manner the check was entered? A. No, sir, I never saw the Tivoli book.

Q. Were you ever advised what the entry reflected? A. No.

[8059] Q. Did you ever see the book? A. No, except when it was here.

Q. That was the first time? A. Yes, sir.

Q. Did you have anything to do with the formation of Compania Comercial La Ribera? A. No, sir, I did not.

Q. Were you down in Cuba at the time the corporation was formed? A. No, I was not.

Q. What knowledge if any did you have with regard to the checks that were made payable in March 1947 to the Economica Agencias and to Fernandina? A. Sometime either in the latter part of April or more likely the early part of May 1947 Mr. Alprin told me that he had received the checks.

[8060] Q. Well, outside of the conversation that you had with Mr. Alprin where you learned that from him, did

Mr. Klein or anybody else advise you at the time the checks were issued about the nature of the payments? A. Neither the nature nor the fact of the payments.

Q. You had no knowledge whatever about it? A. No.

Q. Were you present at any time in Baltimore——

Mr. Bender: Withdraw that.

Q. Before we get to this conversation with Mr. Alprin, did your firm prepare the declaration of estimated tax return for Mr. Klein, 1947? A. Yes, we did.

Q. How did you happen to prepare that? A. Well, after I gave Mr. Klein the consolidated statement, Government's 371, he told me that he was going to sell out his interests in all of these corporations, and I then advised him that when he did sell out he would be required to file a declaration of estimated tax which would include whatever profit he made on that sale.

He asked us if we would prepare that declaration for him. Of course, I was very glad to do it.

[8061] Q. Was there any conversation at that time as to whether this should be filed in Baltimore or in New York? A. Well, he wanted it filed in New York because he was going to make his—not only his home but his business in New York.

Q. And did you thereafter—when I say "you", your firm thereafter prepare such a declaration? A. Yes, we did.

Q. I show you Government's Exhibit 355 in evidence and I ask you if that is a copy of the declaration that your firm prepared? A. It looks just like it.

Q. Now, subsequent to the time that you prepared the declaration did your firm have anything to do with the preparation of Mr. Klein's 1947 federal income tax return? A. Yes, we did, in 1948.

Q. How did that come about? A. Well, in 1948 Mr. Klein asked me to make up his income tax return for that year, asked me if I would make it up, and I said that we would, and he told me he would either send me or see that I got in some way by messenger the necessary data to prepare the return; and before we had a chance to prepare it for filing on March 15, 1948, the jeopardy assessment came through.

[8062] His lawyers asked us to get an extension of the filing of that 1947 return of 60 days, and we obtained that extension for him.

Q. And who were his lawyers at that time? A. Root, Ballantine, Harlan, Busby & Clark I think was the name.

Q. Palmer? A. Palmer.

Q. And who were the others? A. McGuigan & Kilcullen.

Q. Now, did you thereafter prepare his tax return? A. Yes, we did.

Q. Were the figures supplied by Mr. Klein? A. Yes, they were.

Q. Now I show you Defendants' H-FA for identification. Those are the sheets that I showed Mr. Klein yesterday and he identified—he said he believed they were in the handwriting of Mr. Rokoff. Can you identify those sheets? A. Yes. These were the sheets that Mr. Klein gave me to use in the preparation of his 1947 return.

Q. And was it from the figures contained in the exhibit you have before you that you prepared the '47 return? A. Yes.

Q. Now, after you prepared the return, what was [8063] the physical or rather the mechanical details that you followed in having the return finally prepared? A. The same as with any other client. I prepared the return. It was sent along to either one of the partners or a senior accountant to be checked. It was then sent in—after being checked it was sent into the typing office to be typed.

Q. Now I show you this form of 1040 U. S. Individual Income Tax Return. I should like you to look at that and see if you can identify it for me. A. Yes. This is the pencil copy of Mr. Klein's 1947 return.

Q. And is that an identical copy of the original that was filed? A. The original was a copy of this. The typewritten one that was filed was a copy of this.

Q. I see. But there appears a stamp on the retained copy, doesn't there? A. Yes.

Q. That stamp wouldn't appear on the original which was filed? A. On the typewritten copy, no.

Q. And why not? A. This is an office memorandum showing who prepared the return, who approved it, who checked it.

Mr. Bender: I should like to offer both Defendant Haas' FA for identification and the retained [8064] copy of Mr. Klein's 1947 tax return in evidence.

Your Honor, maybe to save time and give Mr. Bauman a chance to look this over, I can withdraw the exhibit at this time and go on with something

else and let him look at it at another time, if he wishes.

The Court: No. We will only get confused that way.

Mr. Bender: All right.

The Court: If it is going in, let it go in now.

Mr. Bauman: The Government has no objection to FA for identification.

Mr. Kiendl: Are they both being offered as one exhibit?

The Court: FA was marked for identification on August the 2nd.

Mr. Kiendl: Which one is being offered now?

Mr. Bender: I didn't hear your Honor.

The Court: Mr. Kiendl asked if they are both being offered as one exhibit.

Mr. Bender: No, I didn't ask that they be marked as one exhibit.

The Court: I am saying they can't be, because one was offered for identification on one day; it would [8065] only confuse the record.

I would suggest that the pencil copy of Klein's '47 return prepared by Haas be marked for identification as Defendant Haas' FB for identification.

Mr. Bender: Very satisfactory, your Honor.

The Court: And then we can dispose of it in regular manner.

Mr. Kiendl: We have no objection to the pencil copy.

The Court: Well, now, you haven't given me any indication on the worksheets.

Mr. Kiendl: I am having Mr. Horowitz look at them for a minute, if we may, your Honor.

The Court: I see. Will you mark the pencil copy of the '47 return Defendant Haas' FB for identification first?

I beg your pardon, that should be not FB, but FF.

Mr. Bender: Your Honor, might I ask the witness a preliminary question now? I think that the pencil copy I just showed counsel did not have attached to it some additional copy sheets which went with the return.

The Court: Well, may I suggest whatever it [8006] is—do you want to find out first before it is marked?

Mr. Bender: Yes, that's right.

By Mr. Bender:

Q. Mr. Haas, can I show you the pencil copy or retained copy of Mr. Klein's '47 return, and will you tell me whether all these—which of the papers were the papers that were attached to that retained copy? A. In addition to the worksheets, whatever is in there now, was attached to it; my worksheets as well.

Mr. Bauman: Your Honor, I was going to say I was a little confused, but Mr. Bender will straighten it out.

Q. Which papers that you have in your hand was the original 1947 H. H. Klein federal tax return a copy of? Is that clear? A. I don't understand the question.

Q. Which papers that you have in your hand, which papers—— A. Yes?

Q. —was the original which you filed and which you said was copied from the retained copy? A. Form 1040, on which the information for the return is listed, Schedule D, which is the schedule of capital gains and losses, form 1116, which is the credit claim for taxes paid to another country, a [8067] schedule containing the details of the long-term capital gains and losses, and the charitable contributions, those all were filed with the Government.

Q. You mean the originals of which? A. The originals of these papers, yes. In addition to that, for our purposes, in our file, we had the worksheets which were identified as FA, prepared or handed me by Mr. Klein, and a summary of those worksheets which I prepared, myself. They all belong in the same folder.

Q. All right. Now look at Goverment's Exhibit 356 in evidence, which is Mr. Klein's filed 1947 federal income tax return, and see whether or not the papers which you have here, other than the worksheets, are the same. A. Yes, they are.

The Court: What about the riders?

The Witness: The riders are not on these worksheets.

The Court: The answer is obviously incorrect. You don't have the riders on your pencil copy of your '47 return, do you, Mr. Haas?

The Witness: I haven't got them with this batch of papers, but I had given them originally to Mr. [8068] Bender.

The Court: You can only go by what your counsel handed you. Mr. Bender handed you certain

blanks, Government blanks of 1040 on which certain pencil figures had been written and data, and he asked you whether they were identical with the exhibit which resulted from them, i.e., Mr. Klein's ribbon copy of the return that was filed, and you said they were.

The Witness: With the exception—I will have to make an amendment to that statement—with the exception of the two riders.

The Court: Yes.

By Mr. Bender:

Q. When you say you gave it to me, I presume that you did. I cannot find it at the moment. But with the exception of the rider, are they identical? A. Yes, they are.

The Court: Even to the words added to the end of the acknowledgment on the bottom of the first page about being done on advice of counsel; is that in your pencil copy?

The Witness: Nor are the signatures. I haven't looked below——

The Court: I didn't ask you that. I know [8069] the signatures aren't there because that was prepared by you as a draft, but was that subscription that was added to the end of the acknowledgment about certain things being done on advice of counsel, is that in the pencilled copy?

The Witness: No, sir. I am sorry, your Honor. I was mistaken about that, too.

The Court: All right. I am not trying to embarass you, Mr. Haas; don't misunderstand me. I

am just trying to keep this record as clear of confusion as we possibly can.

Mr. Bender: That is just counsel's fault, your Honor.

Q. Other than the fact that you may not have conformed the signatures and conformed the answers to some of the questions which are appended to the bottom of the first page of the H. H. Klein tax return, these sheets are the same and the figures are the same? A. Well, now, I have to answer that a little differently now. On my pencil copy there is a rubber stamp made, put on by an employee of my office. There are notations with respect to the fact that no state return was to be filed, that a copy was to be made, and there are figures, worksheet figures, put [8070] in which do not appear on the ribbon copy.

I would like to withdraw my statement saying that it is the same. This riobon copy was prepared from the pencilled copy afterwards. The riders were attached and the legend above the signatures was typed in, and then the returns were signed.

Q. And the retained copy contains the stamp indicating the mechanical way in which you handled the return in your office? A. Yes, sir.

Mr. Bender: Well, I will offer the retained copy in evidence, your Honor.

The Court: So that the record may be clear, let us first dispose of Defendant Haas' FA. The Government has indicated that it did not object thereto.

Mr. Kiendl?

Colloquy

Mr. Kiendl: We do not object thereto, your Honor.

Mr. Donohue: On the grounds that it is not binding as to him, the defendant Alprin objects, your Honor.

The Court: All right. Now then, Defendant Haas' FA is now received——

Mr. Bender: Three sheets, your Honor.

[8071] The Court: ——without objection by the Government or the defendant Klein, the objection of the defendant Alprin thereto being sustained.

(Defendant Haas' Exhibit FA for identification received in evidence.)

The Court: Now then, that brings us to the other document which will become Defendant Haas' FF.

Mr. Bender: Actually, if it is agreeable to counsel, I would merely like to offer or to limit the offer of the retained copy to merely the stamp and the indication of the mechanical way in which the return was handled in the office of Haas, Schlesinger & Mayers, because I can see no good purpose in duplicating the two exhibits beyond that.

[8072] Mr. Bauman: With relation to that exhibit, I would object to the limitation of the offer. I have no objection to the return as originally offered going in, and in order that the record may be clear, in the light of all the discussion of what this exhibit consists of, I wonder if I may make reference to what it is I am consenting may go into evidence. I just intend to do it by form numbers.

Colloquy

Mr. Bender: Before you do that, I will withdraw my offer of the retained copy, and I am simply going to offer the bare form 1040. When I say the bare form, I mean just the form itself with what is written on it.

Mr. Bauman: I did not get that last remark, your Honor.

The Court: Mr. Bender was just defining bare form.

Mr. Bauman: I am sorry I asked.

Mr. Bender: Excuse the legal expression.

Mr. Bauman: The Government objects to the offer unless and until the entire draft of Government's Exhibit 350, until the entire pencil draft is offered in evidence.

Mr. Bender: Defendant Haas withdraws it.

[8073] The Court: Well, let us have the whole thing marked for identification, at least, so somebody reading this record at sometime in the future won't be mystified about what we have been talking about. Mark it Defendant Haas FF withdrawn. Mark it for identification.

(Defendant Haas' Exhibit FF marked for identification.)

The Court: There was some testimony by the witness that his work sheets as distinguished from Rokoff's work sheets, were part of his retained copy. Are they being made part of the Defendant Haas' Exhibit FF for identification?

Mr. Bender: No, your Honor, but I will put them in together with that exhibit.

The Court: I don't care one way or the other except there was testimony about it. All right, so that will be included, too.

Mr. Bauman: I have no objection to them. I didn't think I had seen those subsequent work sheets.

The Court: They are only being marked for identification now anyway. So it does not make any difference.

Mr. Bender: Is Mr. Bauman withdrawing his [8074] objection to the exhibits?

The Court: You have withdrawn them.

Mr. Bender: Only because he objected to it.

The Court: I have ignored his objection because it does not mean anything, you are not offering these papers. They have merely been marked for identification. You offered them and withdrew them. I want them identified for the record.

Mr. Bender: Now I want to know if Mr. Bauman is withdrawing his objection to this thing, because if he is, I will reoffer it.

The Court: It seems to me that where an exhibit is withdrawn before it is received in evidence, the objections to it fall.

Mr. Bauman: I think there must be something contagious here. I was wrong in objecting because it was marked for identification.

The Court: I beg your pardon, I do not want to get into a rhubarb with you, it was not only marked for identification, it was originally offered by Mr. Bender. However, so there will be no doubt

about it, as it stands now, Defendant Haas' Exhibit FF for identification, anything else to the contrary notwithstanding in the minutes, consists of the following:

[8075] The pencilled copy of Klein's 1947 individual tax return, prepared by Haas, from which the filed ribbon copy was copied, and Haas' work sheets thereon.

Is that correct?

Mr. Bender: That is correct.

The Court: The jury is excused until ten-thirty tomorrow morning.

(The jury left the box.)

* * *

(Adjourned until August 4, 1955, at 10:30 o'clock a. m.)

[8076] New York, August 4, 1955, 10.30 o'clock a.m.

Trial resumed.

(Jury in box.)

MAURICE A. HAAS resumed.

Mr. Bender: With the Court's permission I would like to call the jury's attention to Defendant Haas' Exhibit FA in evidence, without reading every entry that appears thereon.

The Court: Very well.

(Mr. Bender reads from Defendant Haas Exhibit FA to the jury.)

Direct Examination Continued by Mr. Bender:

Q. Mr. Haas, in connection with the 1947 return of H. H. Klein, you have already testified as to the mechanical manner in which your firm handled that return, did you not? A. Yes, I did.

Q. In addition to the mechanical way in which the return was handled, what was your usual practice with respect to advice you might render with respect to anybody's [8077] income tax return, and when I say you, I am talking about your firm?

Mr Bauman: Excuse me, your Honor I object to that question. The manner he would render any advice.

Mr. Bender: I will withdraw it and rephrase it, if I may, your Honor.

The Court: Yes.

Q. What advice, if any, was it customary to render to any individual in the preparation of his or her income tax return?

Mr. Bauman: I object to that question.

The Court: I will allow it. Overruled.

A. We would examine the data that was submitted to us by the client and advise him as to the deductibility of the items that he claims deductions and the taxability of the items that he showed as income.

Q. You did that as a matter of general routine, did you not? A. Yes.

Q. And your firm has handled many returns? A. Yes, we have.

Q. Both federal and state? A. Yes.

Q. You handled that situation in the same way [8078] as any internal revenue agent might around tax time for any citizen who asked him to prepare a return for him?

Mr. Bauman: I object.

The Court: Sustained.

Q. In connection with Mr. Klein's 1947 return, were there any questions raised in your mind in connection with the preparation of that return? A. Yes, there were.

Q. What were they, briefly? A. During my conversations with Mr. Klein in 1947 I learned that he had purchased from one of the Cuban or Panamanian corporations some 70-odd shares of UDL, and with respect to that purchase and with respect to the Tivoli-Hannes matter I was wondering and I was doubtful as to how they should be handled on the tax return, if at all.

Q. What did you do about it? A. I discussed the matter with Mr. Klein and he said that he would like to get an opinion from his attorneys.

Q. Did he mention the names of the attorneys? A. Yes, he communicated with Root, Ballantine, Harlan, Busby & Palmer. I received a communication from them in which they recommended the attaching of a [8079] rider to Mr. Klein's 1947 return. I took that up with Mr. Klein and he thought he would like to get the opinion of McGuigan

& Kilcullen, who were handling his 1946, 1945 and 1944 tax matters before the Bureau, so that they were consulted.

They then submitted to me a rider which was attached to the return and in my discussions with either McGuigan or Kilcullen, I don't remember which one, it was suggested that I put that legend on the return, that it was prepared with the advice and assistance of counsel.

[8080] Q. And who, if anybody, instructed you to attach the rider to the 1947 return? A. That was part of the advice given by McGuigan & Kilcullen.

Q. And after that the return was prepared mechanically in the way you have testified? A. Yes.

Q. And it was filed, was it, for Mr. Klein? A. Yes.

Q. Now I should like to go back a minute, Mr. Haas. You testified yesterday that you had, upon liquidating the corporation, La Ribera, divided the $35,000 three ways between you, Mr. Mayers and Mr. Schlesinger, your partners. Do you recall that? A. That's right, yes.

Q. I show you these three checks which I believe appear in Government's Exhibit 337. Those are photostatic copies of the checks which are in the exhibit. Suppose I withdraw those photostatic copies and let you look at the exhibit itself and see if you can identify those three checks, Mr. Haas. A. Yes, sir.

Q What are those three checks? A. The first one is a check made payable to [8081] Samuel Mayers for $11,666.66, signed by me as president of Compania Comercial La Ribera and deposited by Mr. Mayers in his personal account in the Sterling National Bank & Trust Company.

The second is a check made payable to me for $11,666.67, and similarly signed and deposited by me in my account in the Chemical Bank & Trust Company.

The third is a check to Julius Schlesinger for $11,666.67, signed similarly by me and deposited by Mr. Schlesinger in his personal account in the Chemical Bank & Trust Company.

Q. Now did you have an extensive tax library in your office in Haas, Schlesinger & Mayers? A. Yes, we did.

Q. And you did all your own individual research on tax problems that would come up from time to time? A. Yes, I did.

Q. And as you indicated to the Court yesterday, from time to time you have rendered tax opinions of one kind or another, is that correct? A. Yes, I have.

Q. Yesterday you indicated that you, as a result of your conversation with Mr. Alprin, had recommended certain changes in the proposed agreement [8082] between Agencias and R. C. Williams to conform to your interpretation of the law; do you recall that? A. Yes, I do.

Q. Had you had occasion before that time, and since that time, in connection with your tax advice on different problems, to make similar recommendations? A. Yes, I have.

Q. In connection with what kind of situations? A. Where clients were going into business and there was a question of the type of organization that they should use in conducting their business. The clients were purchasing the business from somebody else; the method of purchasing. Since I was an attorney also, I examined papers in connection with any transaction that a client of ours was entering into.

Q. Did you handle any situations involving wills, contracts, trusts? A. Yes, I did—corporations——

Q. From the tax point of view? A. That's right.

Q. With an idea of trying to save taxes for your clients? A. Yes, sir. It is perfectly proper to save taxes for the client.

[8083] Q. And when you advised your clients under those circumstances was it with a view in mind of keeping within the law as well as saving taxes? A. Yes, of course.

Q. Did you have any knowledge whatever from the time that you rendered the first opinion in April of 1944 up until the time the jeopardy assessment was levied against Mr. Klein and H. Harvey & Co., and his wife, of any investigation by the Bureau of Internal Revenue in connection with the Harwood situation? A. Never did.

Q. When was the first time, if ever, that you learned of any such investigation? A. When copies of the jeopardy assessments were left at our office.

Q. Mr. Haas, at the time that you filed——

Mr. Bender: Withdraw that.

Q. At the time that you prepared your consolidated balance sheet, Government's Exhibit 371, there is no reference in that statement to the Tivoli Trading Company, is there? A. No, there isn't.

Q. Did you at the time that you prepared that consolidated balance sheet know of the existence of the corporation, Tivoli Trading Company? [8084] A. Yes, Mr. Klein had told me that he had a corporation by that name.

Q. When did he tell you that, sir, if you can recall? A. Sometime in 1946. I don't remember exectly when.

Q. And how did he hapen to tell you about it? A. When he was asking me to compute his share in the busi-

ness, he told me that he had a corporation known as Tivoli Trading Company, which he was not including in the figures because he had no intention of disposing of that corporation.

Q. And was it for that reason that you did not obtain a trial balance of the Tivoli Trading Company from Mr. Klein? A. Well, it wasn't for that reason. Mr. Klein just didn't give me a trial balance of that corporation.

Q. At that time did you have any knowledge of the bank account of Tivoli? A. I did not.

Q. Did you ever see the books or the book of Tivoli Trading Company? A. I did not, never did.

Q. As a matter of fact, you never saw the book [8085] of Tivoli Trading Company until you came into this courtroom, is that correct? A. That's right.

Q. Did you at any time since the time you rendered your first opinion in this case on April 1944 to the present date ever have, to your knowledge, any of the Cuban and Panamanian corporate memoranda or books or any of the books of the Cuban and Panamanian corporations in which Mr. Klein had an interest, in your office? A. No, sir.

Q. Now you say your firm did the auditing of some of the corporations in which Mr. Klein had an interest. A. Yes, we did.

Q. And I believe you have indicated in your statement to the Bureau of Internal Revenue that that was H. Harvey & Co. and Belaire Management Corporation, and I think for a while, Cambridge Distributing; is that correct? A. That's right.

Q. Did you yourself handle the actual audits of the books of these various corporations? A. No, I did not. The members of our staff did that.

[8086] Q. The members of your staff? A. Yes.

Q. And in or about 1947 how many employees did you have at Haas, Schiesinger & Mayers? A. To the best of my recollection we had somewhere between 20 and 25 accountants and 4 girls. That is exclusive of the partners.

Q. So that even with regard to the books of H. Harvey & Co. in the later years and the Cambridge and Belaire, you, yourself, never even saw those books? A. I never did.

Q. But they were audited by accountants in your office? A. Yes; I saw the results of their audit but I never saw the books themselves.

Q. You say in 1947 you had about 20 or 25 accountants? A. Yes, sir.

Q. And in addition to that did you have other clerical employees? A. We had four girls in the office.

Q. And these girls, what did they do? A. Well, three of them were—all four of them were typists and stenographers, but one of them specifically was a receptionist.

[8087] Q. Of the three that you have mentioned, was one Rene Bennett? A. Yes, sir.

Q. And did she also take dictation for letters? A. Yes, she did.

Q. Miss Bennett's testimony, however, if believed by the jury, would seem to indicate that you did have at least one of these memo books in your possession, the Regan Potter book. A. I never knew that until I heard her testify to that on the stand.

[8088] Q. Mr. Haas, you heard her testimony? A. Yes, I did.

Q. Did she ever to your knowledge make an entry for you or any of your partners, any of your accountants, in

any book of account of any client that you ever had in Haas, Schlesinger & Mayers? A. Speaking for myself she certainly made no entries in my books at my direction, and with almost 25 accountants on our staff we wouldn't have a typist or stenographer make entries in any client's books.

Q. Would you say Miss Bennett was lying?

Mr. Bauman: Just a moment. I object to that.
The Court: Overruled.

A. No, Miss Bennett wouldn't lie. She was mistaken.

Q. It is your testimony, is it, that neither you nor anybody in your office to your knowledge ever made an entry in any of the Panamanian or Cuban corporation books that have been introduced in evidence here? A. Speaking again for myself, I never made an entry in any of those books, nor did I ever direct anybody, whether it was the accountants in our office or the girls in our office to make any such entry.

[8089] Q. Would it be a fair statement to make, Mr. Haas, that if you had been asked to make an entry in the Regan Potter book you would have made it yourself rather than ask Miss Bennett or anyone who never handled books to make an entry? A. If I were asked to make an entry in the Regan Potter books and I thought the entry was a proper one, I would make it. I would not ask either the girls or the men working for me to make it. I can write myself.

Q. I just wanted to make sure of that, Mr. Haas.

Mr. Bauman: I move to strike Mr. Bender's comment, your Honor.

The Court: Granted.

Q. Your firm also handled the income tax returns of Morris Alprin, did it not? A. Yes, we did.

Q. How long, or, put it this way, for how long has your firm prepared the income tax returns of Morris Alprin? A. We have prepared them annually since 1937 to 1951.

Q. Did you also, and when I say you I mean your firm, also handle the return for his family? A. We prepared the returns for his father and [8000] mother and his children, and the estate of his parents.

Q. Were those returns likewise handled in the same way mechanically that you have described your firm handled the 1947 Klein return? A. Yes, of course.

Q. Did you have a conversation with Mr. Alprin in 1947 with regard to this check to Economica Agencias? A. Yes, I did.

Q. Tell us to the best of your recollection what that conversation was and where it took place, if you remember?

Mr. Kiendl: If your Honor please, the defendant Klein objects to that as not binding on him.

The Court: The objection of the defendant Klein will be sustained as to this conversation.

A. I think it was sometime in the early part of May, 1947 when Mr. Alprin called me and told me that he would like to come up to see me, and he did come to see me in my office. He told me then that he had received a check, rather, a bank draft, from Mr. Klein for $264,000-odd and made payable to one of his Cuban corporations in liquidation of his stock

interest in Tivoli Trading Company. He also told me at that time that Mr. Klein had directed him to take the check up to Toronto, [8091] Canada, to deposit it there and not to use it until further instructions from Mr. Klein.

Q. What was the reason for this conversation with Mr. Alprin? A. I was preparing his income tax returns from year to year, and while he himself as an attorney had looked into the authorities, as he told me, with respect to the taxability or the reportability of that check, he wanted to check that with me.

Mr. Kiendl: If your Honor please, my objection, I assume, extends to the entire line regarding this conversation.

The Court: Yes.

Q. What if anything did you tell him as to what your opinion was? A. After he told me the circumstances under which he received the check, I told him that it was my opinion that a cash basis taxpayer who received income with restrictions which prevented him from using that income would not be required to report that income until those restrictions were lifted.

Q. Was that your honest opinion? A. Yes, it was and still is.

Q. Had you done any research in connection with that? A. Yes, we checked the authorities.

[8092] Q. Had Mr. Alprin or anyone suggested that you render to him such an opinion which would be convenient to him? A. Of course not.

Q. That was your honest opinion then? A. It was then and it is now.

Q. You thereafter, and when I say you I mean your firm, prepared Mr. Alprin's 1948, 1949, 1950 and 1951 returns? A. Yes.

Q. When you prepared the 1947 return, which was to be filed normally March, 1948, did you have a conversation with Mr. Klein at that time about this check to Economica Agencias? A. Yes, I did.

Q. Where did that conversation take place? A. In my office.

Q. About when to the best of your knowledge? A. It was just a short while prior to March 15, 1948.

Q. What did you say to him and what did he say to you? A. I told him Alprin told me about the check he received and the circumstances under which he had received it. I told Mr. Klein that I would like to check with him that that was so. He said to me, "Anything that has to do with Alprin's check you talk [8093] to him about it and not to me."

Q. Did you ever talk with Mr. Klein after that with regard to this check? A. No, I know when a man was telling me to mind my business, that I would mind it.

Q. When you prepared, and when I say you I am talking about your firm, the 1948, 1949, 1950 and 1951 returns, did you make any further inquiry of Mr. Alprin with regard to whether the restrictions had been lifted from the check? A. Yes, we talked about it from time to time.

Q. What did Mr. Alprin tell you? A. The restriction had not been lifted.

Q. Your firm also prepared the declaration of estimated tax for each year for Mr. Alprin, did you not? A. Yes, we did.

Q. In 1951 had your firm prepared the declaration of estimated tax for Mr. Alprin? A. 1951, yes.

Q. Did you also prepare the declaration of estimated tax for Mr. Alprin in 1952? A. Yes, I did.

Q. Did you include in that declaration of estimated tax the amount of tax that Mr. Alprin would [8094] have to pay on this check when the restrictions were removed? A. No. At the time I prepared that declaration the restriction had not as yet been removed.

Q. When the restrictions were removed did you file an amended estimated tax estimate? A. No, I did not. By that time I had some personal problems at home and I didn't come into the office and Mr. Alprin went to an attorney to have that prepared for him.

Q. So that actually you did not prepare the amended estimate. As a matter of fact, do you know whether an amended estimate was ever filed? A. I saw it introduced into evidence here.

Q. Did you have anything—I would assume it was filed.

Did you have anything to do with the preparation of his 1952 final tax return? A. No, I did not.

Q. Did anyone in your firm have anything to do with that? A. No, we did not.

Q. Your firm subsequently became an escrowee agent of Mr. Koerner's check, did you not? A. Not subsequently, that was prior in 1951, [8095] the early part of 1951 or the latter part of 1950, I am not sure which.

Q. How did that happen? A. Well, Mr. Alprin called me and told me——

Mr. Kiendl: May we have an objection to this conversation?

The Court: Same ruling.

A. Mr. Alprin called me and told me Mr. Koerner had been after him for some time to compel Mr. Alprin to deliver up to Mr. Koerner that check, and that he had consistently refused. He told me that Koerner had engaged a firm of attorneys and was going to start a lawsuit, and that he and Koerner and Koerner's attorneys had agreed that it would be satisfactory to put Koerner's check in escrow, the escrowees to be Koerner's attorneys and our firm, and that the check was to remain in escrow with us until such time as Mr. Klein released it.

Q. When you say "with us" whom do you mean? A. My partner, Mr. Schlesinger, and myself.

Q. To whom was the check actually delivered? A. It was delivered to me in the presence of two attorneys of Mr. Koerner and my partner.

Q. Do you remember the names of those attorneys? [8096] A. I know one of them was Mr. Glassgold. I have forgotten the name of his associate.

Q. Then what happened with the check? A. The four of us rented a safe deposit box in the Sterling National Safe Deposit Company in our building, in the Chanin Building, and we put the check in that box, subject to being opened by either Mr. Glassgold and his associate, plus either myself or my partner.

Q. Did there come a time when the check was released? A. Yes. Mr. Alprin called my partner——

Mr. Kiendl: May we have an objection to this conversation?

The Court: Sustained.

Q. Which partner? A. Mr. Schlesinger. He told him the check has been released by Mr. Klein and we should deliver it to Koerner's attorneys. My partner called me on the telephone, I was home, and I came down one day, I don't remember just what day it was, met with Koerner's attorneys and my partner, we opened the box and delivered the check to Koerner's attorneys.

Q. I show you Government's Exhibit 347 in evidence which is the 1952 tax return of Morris Alprin and his wife, and I believe this is the return which you [8097] said you had not prepared or filed for Mr. Alprin? A. Yes.

Q. Actually, that was prepared by another accountant and attorney, Michael Kaminsky? A. Yes, he signed it.

Q. I show you Government's Exhibit 253, which is the 1952 income tax return of Irving Koerner and his wife, and I ask you did you or your firm or anybody in your firm have anything to do with the preparation and the filing of that return? A. No, sir, we did not.

Q. And that return too indicates on the bottom that somebody else prepared it, is that correct? A. Yes, it was prepared by some firm of accountants, some other firm.

Q. I show you Government's Exhibit 348 in evidence, the individual income tax return of 1950, of Mr. Roer and his wife. Did you or your firm prepare or file that return? A. No, sir, we did not.

Q. Neither you nor any one in your firm had anything to do with any advice rendered to Mr. Koerner or Mr. Roer in connection with their checks? A. No, sir, never.

[8098] Q. As far as Mr. Alprin is concerned, only to the extent that you have already testified? A. Yes.

Q. Mr. Haas, with regard to the accounting and tax services you and your firm rendered, as you testified, did you ever conspire with anyone named in this indictment or anyone else to render such services with the express purpose of defrauding the United States in any manner whatever? A. No, sir, I never did.

Q. At the time La Ribera received the loan from Tivoli or thereafter, when you offered to return that check, did you engage in that transaction pursuant to any conspiracy with anyone to unlawfully and wilfully impede, impair, obstruct the functions of the Bureau of Internal Revenue in ascertaining the amount of taxes which may have been due from Klein, Alprin, Koerner or Roer, or anyone else, on money made from the Harwood deal in the years 1944, 1945, 1946 and 1947? A. No, sir, I did not.

[8099] Q. With regard to the accounting and tax services rendered by you and your firm to H. H. Klein and any of his interests, as you have testified to, did you ever conspire with H. H. Klein or anyone else to perform such services for the express purpose and with the intent to defraud the United States by impeding, obstructing, impairing the Bureau of Internal Revenue or the functions of the Bureau of Internal Revenue in ascertaining the amount of taxes which may have been due from Klein, Alprin, Koerner, Roer or any other individual on the money made from the Harwood deal from 1944 to 1947 inclusive? A. No, sir, I did not.

Q. Did you at the times you and your firm performed accounting and tax services, or any other services for

Morris Alprin with regard to the two drafts to Alprin and Koerner received from Tivoli, ever perform such services with the knowledge of any alleged conspiracy between the defendants named and anyone else to impede, impair, obstruct the functions of the Bureau of Internal Revenue in ascertaining the amount of taxes which may have been due from Mr. Klein, Mr. Koerner, Mr. Alprin, Mr. Roer or any other individual on the money made from the Harwood deal in [8100] 1944 to 1947 inclusive? A. No, sir, I did not.

Q. Mr. Haas, did you ever, or your firm, ever perform such services for Morris Alprin with an intent to knowingly participate in, become a part of or even further any such alleged conspiracy? A. No, sir.

Mr. Bender: I have no further questions.

Cross-Examination by Mr. Bauman:

Q. You told us yesterday, Mr. Haas, did you not, that you drew Government's Exhibit 8 in April 1944, is that right? A. Yes, sir.

Q. And Government's Exhibit 8 is your tax opinion rendered during the year 1944, is that right? A. Yes, sir.

Q. You said that at the time you drew that you had been furnished with a copy of Government's Exhibit 2-A, which is the draft or a draft of an agreement between R. C. Williams and Agencias Destiladores; isn't that right? A. That's right.

Q. Would you look at Government's Exhibit 2-A, [8101] the draft which was furnished you, and after you have done that I would like you to look to Government's

Exhibit 5, which is the supplemental agreement of April 20th.

Would you look at 2-A first, please, and then look at Government's Exhibit 5. A. Do you want me to compare the two?

Q. I want you to tell me, sir, after you have compared them, whether the provisions of Government's Exhibit—and I will specifically call your attention—whether the provisions contained in paragraph 1 of Exhibit 5, paragraph 2 of Exhibit 5, are contained in 2-A, the draft of the agreement between Agencias and R. C. Williams.

The Witness: May I have time to read this?

The Court: Of course.

A. Neither of the first two paragraphs of Exhibit 5 are contained in Exhibit 2-A.

Q. Then it was my understanding of your testimony of yesterday, Mr. Haas, that when you prepared your opinion, Government's Exhibit 8, you had before you in the first instance another copy of 2-A, the draft of the agreement, is that right? A. That's right.

[8102] Q. And that was all that you had before you at that time, is that right? A. That's right.

Q. That was all that Mr. Alprin furnished you at the time you rendered that opinion, Government's Exhibit 8, is that correct? A. That is correct.

Q. And that thereafter—and correct me if I am wrong—you later saw a copy of Government's Exhibit 4, which was the final draft of the contract, that draft of the contract which was finally executed, is that correct? A. Yes, sir.

Q. So that I understand your testimony to be that at no time in your consideration of the problems raised by these contracts did you consider the first two paragraphs of the supplementary agreement because they were never called to your attention by Mr. Alprin, is that right? A. That's right.

Q. What were you paid for that opinion at that time? I think you said $200, did you? A. That's correct.

Q. And who paid you that? [8103] A. Mr. Alprin, to our firm.

Q. Was the check a check of Agencias Destiladores? A. I don't think so.

Q. Do you remember whose check it was? A. To the best of my recollection it was Mr. Alprin's.

Q. And that was made payable to Haas, Schlesinger & Mayers or was it made payable to you, Mr. Haas? A. I think it was made payable to the firm.

Q. Thereafter during that year did you discuss the problems incident to the Harwood deal at any time with Mr. Alprin? A. No, I did not.

Q. And during the year 1944 you did not speak with Mr. Klein, is that right? A. No, sir, I did not.

Q. However, you stated that early in 1945 you received a telephone call from Mr. Klein, is that correct? A. That's correct.

Q. And when in 1945 was that, Mr. Haas? A. It was the early part of 1945.

Q. What is your best recollection of what time [8104] during the year 1945 it was? A. Either January or February.

Q. That was the first time you had ever spoken to Mr. Klein, is that correct? A. That's correct.

Q. You had been made aware of his participation in the Harwood deal by Mr. Alprin previously, is that right? A. That's right.

Q. Now you received a telephone call in the first two months of 1945, approximately. Will you tell me, please, precisely what it was that you said to Mr. Klein and what Mr. Klein said to you in that conversation. A. I don't think I can tell you precisely. I can tell you the substance.

Q. What is the best of your recollection, Mr. Haas? A. I can tell you the substance of our conversation. That was that Mr. Klein, after introducing himself to me, told me that he would like to be in touch with me in 1945 for the purpose of securing tax information and tax advice from me; that he wasn't disposed to have me send the bill to him every time he [8105] called me or wrote to me, and asked me if I would accept a retainer for the full year of $500, and I agreed to accept that retainer for the firm.

Q. That was substantially the conversation as you remember it, is that correct? A. Yes.

Q. You had never spoken to him before that? A. No, sir.

Q. Within a month or approximately within a month after that time you were called upon to render another opinion, is that correct? A. In February 1945.

Q. And that one you said, as I remember it, was based on Government's Exhibit 4, which is the agreement of April 18th, is that right? A. That's right, and in addition, information which Alprin gave me verbally over the telephone.

Q. What information was that, Mr. Haas? A. The information that was contained in the first paragraph of my letter of February 1945.

Q. Tell me, before you rendered that opinion, then, you had a telephone conversation, as you have told us previously, with Mr. Alprin, is that correct? A. Yes.

[8106] Q. Tell me, please, what that telephone conversation was between you and Mr. Alprin before the rendition of this opinion. A. When he called me on the telephone he reminded me of the opinion that I had rendered in April 1944; he told me that his client had been in operation now for some months. He gave me the information that is contained in the first paragraph of that letter, and he asked me if I would give a further opinion as to whether or not the operations of that business were taxable in the United States.

I asked him if the contract had been—I assumed that the contract had been finally signed, and he said it was, and I asked him to send me a copy of that, which he did.

Q. And the copy you got was a copy of Government's Exhibit 4, is that correct? A. That's right.

Q. At that time did Mr. Alprin send you a copy of Government's Exhibit 5, the agreement of the 20th? A. No, sir.

Q. And so, up through the rendition of your [8107] opinion of February 27, 1945, Government's Exhibit 358, you had never seen that agreement of the 20th? A. No, sir.

Q. When for the first time did you see that, Mr. Haas? A. In March of 1952, when it was shown to me by one

of the Revenue agents to whom I made a statement. I think it was March—no, it was November, I think, of 1952.

Q. At the time that you prepared these two opinions, Government's Exhibits 8 and 358, Mr. Alprin had neither shown you Government's Exhibit 5 nor told you orally the substance of those first two paragraphs, is that your statement, Mr. Haas? A. That is my statement.

Q. That you had never been advised of those facts? A. Correct.

Q. You rendered that opinion, I take it, at about the time it is dated, namely, on February 27, 1945, is that right? A. I would believe so.

Q. When did you hear from Alprin again after that? [8108] A. I believe it was April 1945.

Q. And did you see him at that time or did he call you on the telephone or what? A. He wrote me a letter.

Q. Did he call you before he wrote that letter, Mr. Haas? A. No, I don't think so.

Q. Did you have any conversation with him about Mr. Klein's reaction to your opinion of February 27, 1945? A. I don't recall.

Q. Did you have any conversation with Mr. Alprin in which—and I am talking at any time during the year 1945—in which he told you that Mr. Klein didn't like that opinion? Did you have such a telephone conversation with Mr. Alprin? A. I have a vague recollection of a conversation of that kind during '45. I don't remember just when it was.

Q. And did that conversation take place in person or did it take place over the telephone? A. I don't remember.

Q. What was the substance of that conversation, if you remember it, Mr. Haas? [8109] A. That conversation is very vague in my mind.

Mr. Kiendl: May we object to this, your Honor?

The Court: Sustained.

Q. Go ahead. A. The only thing that stands out in my mind is that Mr. Klein thought the last paragraph of that February 1945 letter was gratuitous.

Q. In January 1946——

Mr. Bauman: I withdraw that.

Q. Your recollection is that Mr. Klein thought that the paragraph was gratuitous? A. My recollection is that that is what Mr. Alprin told me.

Q. That Mr. Klein felt that the paragraph was gratuitous? A. Yes.

Q. And what else do you remember of that conversation, Mr. Haas? A. I don't remember anything else about it.

Q. You have no recollection of the remainder of that conversation? A. No, sir.

[8110] Q. Did Mr. Alprin tell you that Mr. Klein didn't like the opinion?

Mr. Kiendl: My objection continues to this line, your Honor, without interrupting.

The Court: Yes.

A. The fact that he told me that Mr. Klein felt it was gratuitous made me feel that perhaps he didn't like it.

Q. I asked you whether Mr. Alprin told you that Mr. Klein didn't like that opinion. A. I don't remember, Mr. Bauman.

Q. You don't remember? A. No.

Q. You have no recollection at all of whether or not a man who was engaged in this Harwood Whiskey venture sometime during the year 1945 had told Alprin, who told you, that he didn't like an opinion you had rendered? You don't remember that? A. The fact that he was engaged in the Harwood venture wouldn't influence me in any way.

Q. I know. Do you remember, though, what your conversation was about this possible new client who had stated to you that he would like to call upon your professional knowledge for a retainer of $500 a year? [8111] A. Correct, and I am not influenced if a client does not like my opinion.

Q. I didn't ask you that, Mr. Haas. I didn't ask you if you were influenced. I asked you whether you remember the conversation with Mr. Alprin about Mr. Klein's reaction to this so-called gratuitous paragraph. A. That was the reaction, that he felt it was gratuitous.

Q. That was your entire conversation with Mr. Alprin, is that right? A. I don't say that was my entire conversation. That is what I remember of it.

Q. That is all you remember of it? A. Yes.

Q. When did you meet Mr. Klein for the first time, Mr. Haas? A. Sometime in the latter part of 1946.

Q. Let us try to pin that down a little more. I believe you testified yesterday—and you correct me if I am wrong—that you met Mr. Klein in the fall of 1946, is that right? A. I would guess September or October.

Q. Is that a guess or is that your best [8112] recollection? A. That is my best recollection.

Q. So that it was either in September or October that you saw Mr. Klein, is that right? A. Yes.

Q. Where did you see him at that time? A. In his office.

Q. In Baltimore? A. In Baltimore.

Q. And you stated to us yesterday that you went down to Baltimore at his request, is that correct? A. Yes.

Q. He had called you on the telephone? A. Yes.

Q. And you went down to his office? A. Yes.

Q. And you spoke to him there, is that right? A. Yes.

Q. Who else was present at that time? A. When I spoke to him?

Q. Yes. A. Mr. Rosenberg.

Q. Was Mr. Rokoff there? A. Mr. Rokoff and Mr. Silver were in the office when I came in, but they weren't present at the time I [8113] spoke to Mr. Klein.

Q. Tell me, please, the conversation that you had with Mr. Klein in his office in September or October 1946. A. Mr. Klein told me that the Harwood business was either at an end or coming to an end—I don't exactly recall what he said—and that he would like me to compute for him what his share in that venture was, and that he had temporary figures and just wanted a rough estimate at that time as to that share of the business.

Q. I am awfully sorry—that he had what kind of figures? A. Tentative.

Q. Tentative. I am sorry. Go ahead. A. He showed me a worksheet which contained those figures which he described as tentative, and asked me if I could compute what his share of that business was, and I did compute it for him roughly.

Q. Did he give you those tentative figures at that time? A. Did he give them to me?

Q. Yes. A. No. He just showed them to me and I handed [8114] them back after I was through computing.

Q. As I understand it, he told you that he wanted you to compute his share, is that right? A. That's right.

Q. And in order to compute his share he gave you what he called some tentative figures, is that correct? A. Correct.

Q. And in order for you to have computed that share he would physically have had to have given you those tentative figures, is that right? A. He gave them to me, yes.

Q. Yes. What did you do with them? Did you take them back to New York with you? A. No. I handed them back to him when I was through making my computations.

Q. You made your computation right then and there in his office, is that right? A. At his desk.

Q. At his desk? A. Yes.

Q. What else did he tell you during this conversation, Mr. Haas? Did he tell you, for instance, about what corporations he owned? [8115] A. I don't remember whether it was at that conversation or whether it was in December that he told me about the corporations that he had an interest in.

Q. At the time that you had this discussion with him September—in September, Mr. Haas, the only corporation which you associated with Mr. Klein was Agencias Destiladores, isn't that right? A. No. At the time that he gave me the worksheet it was a series of trial balances of

all the corporations. As a matter of fact, I don't think Agencias——

Q. He gave that to you in September, is that correct?

Mr. Bender: Your Honor, may he be permitted to finish the answer?

Mr. Bauman: Surely.

Q. Did you want to say something? A. I wanted to say that my recollection is at that time there was no trial balance for Agencias.

Q. But the trial balances you are talking about are those trial balances, Government's Exhibit 381, isn't that correct? A. No, no. Government's Exhibit——

[8116] Q. Was there—pardon me. A. —Government's Exhibit 381 were given to me in December 1946. The sheet that I had earlier was a long worksheet like you have seen here before, a big yellow worksheet with all the trial balances on one sheet.

Q. A columnar sheet listing figures for each one of the corporations, is that it? A. Yes.

Q. How many corporations were on that trial balance? A. I don't remember; I didn't count them.

Q. Was Tivoli on that sheet? A. No.

Q. Was there a discussion with Mr. Klein in that September meeting about the function of each of these corporations? A. I don't remember whether it was at that meeting or in December.

Q. Isn't it a fact that at that meeting in September 1946 in Baltimore, Mr. Klein sat down with you and explained to you the function of each and every one of those

corporations; isn't that the fact? A. It may be, but I don't know whether it was in September or December.

[8117] Q. Your best recollection is— A. It could have been September or December.

Q. Your best recollection is that at one of those two meetings, either in September or December 1946, Mr. Klein sat down with you and outlined to you the function of each of these corporations, is that right? A. He outlined to me at either one of those meetings which corporation was owned by which, because in December 1946 he asked me to prepare a consolidated balance sheet, and in order to prepare a consolidated balance sheet, if you will examine it, I had to have a separate schedule, a separate exhibit for each holding company and its subsidiaries, so that in order to prepare that statement I had to know which were the holding companies and which were the subsidiaries.

By examining the trial balances themselves, I could tell which were operating companies and which were investment companies by the nature of the income that they had.

[8118] Q. By the nature of the income they had, Mr. Haas? A. Yes, the nature of the assets which they held, yes.

Q. It is the fact, is it not, that Mr. Klein sat down with you in Baltimore either in September or December, 1946, and explained to you the purpose and function of each one of the corporations in the Harwood transaction, is that right? A. As I have just testified to.

Q. Have I stated it properly? A. I don't like you to put words in my mouth. He told——

Mr. Bauman: I move to strike that.

The Court: Denied. You are trying to get him to say something and he is trying to tell you that is not what was told to him. I will let you go as far as you want on cross-examination, but I am certainly not going to stifle the witness. He says he doesn't want you to put words in his mouth and I am certainly not going to strike that out.

Mr. Bauman: I am not trying to do that.

The Court: You are talking about functions of the corporation and he is talking about ownership of the corporation and the fact that he could tell from [8119] the figures on the trial balance whether they were operating companies or whether they were merely depositaries. You fence with him, don't fence with me.

Q. Let me ask you the question again, Mr. Haas. Did Mr. Klein in September or December, 1946, in his office in Baltimore explain to you the function of each one of the corporations in the Harwood deal?

Mr. Bender: I am going to object to this on the ground it is a little difficult for anyone to understand what Mr. Bauman means by the word "function."

The Court: Apparently it is not difficult for your client, because he has made himself very clear that he is having no difficulty in disagreeing with the characterization. Objection is overruled. The jury may have a fifteen-minute recess.

(Jury leaves the box.)

* * *

By Mr. Bauman:

[8124] Q. I want to come back to that September or December meeting at which Mr. Klein first discussed with you in Baltimore his various corporations. We have had a recess and I would like to start with you again, if I may, and see if I can get it straight in my mind. There came a time did there not, Mr. Haas, when Mr. Klein told you the names of each of his corporations; is that correct? A. That's correct.

[8124a] Q. When was that? Was that at the September meeting, Mr. Haas? A. In the September meeting I saw the names of the corporations on that tentative worksheet.

[8125] Q. Did he ever tell you who the officers and directors of those corporations were? A. Yes, he did.

Q. When was it that he told you who the officers and directors of the corporations were? A. It was either September or December.

Q. That is the thing you are not certain of, is that correct? A. Yes, that's right.

Q. But a time did come, did it not, when Hyman H. Klein in Baltimore sat down with you and told you the names of each of his corporations and told you who the officers of each of those corporations were? A. Yes.

Q. What were the circumstances under which Mr. Klein told you that? How did that come up in the discussion? What were you talking about and what had you said to him and what had he said to you? A. At the time that I was going to prepare a consolidated statement for him, I had to know certain facts. I had to know which corporation owned which. I think I mentioned to him at that time—I think it was at that time—that while I was getting all the

information with respect to stockholdings, that I [8126] ought to have for my records, although they weren't relevant to the statement itself, just who was who in these corporations, and he told me.

Q. That wasn't part of the information required by you, or was it, for filing his tax returns? A. No. I say it wasn't relevant.

Q. It was just information you felt you wanted to have in your office, is that correct? A. In my files, yes.

Mr. Bender: I will object to that. I don't think that this consolidated balance sheet was testified to in the evidence that it had anything to do with the tax return at that time. I think Mr. Bauman is mistaken in framing that question in that regard.

The Court: Sustained.

Q. When did Mr. Klein first tell you anything about Tivoli, Mr. Haas? A. Again I will have to say it was either in September or in December. Those two months are so close together, and still so far away from today, that I cannot separate them too well.

Q. As I remember it, when you first went down there in September and he asked you to make a tentative computation as to what his share of the Harwood [8127] Whiskey deal was, you did that; is that correct? A. That's right.

Q. Seated at a desk in his office in Baltimore. A. Yes.

Q. And at that time you were handed a worksheet which listed the various corporations and, as I believe you said a moment or two ago, contained trial balances on columnar sheets for each of the corporations that were involved in the computation which you were making in Baltimore, is that right? A. That's right.

Q. Do you remember in that September computation whether Tivoli was one of those corporations? A. I don't remember whether it was there. I don't think it was.

Q. As a matter of fact, Mr. Klein told you, did he not, when you first made your first computation in September or October, whenever it was—we have been talking about September 1946, Mr. Haas—Mr. Klein then told you to exclude Tivoli from your computation, isn't that correct? A. My recollection leans more towards the December meeting with respect to that matter.

Q. At any event, you drew up these figures, the [8128] consolidated balance sheet, for Mr. Klein at his request sometime, would you say, early in January of 1947? A. Yes.

Q. Before that you had had a conversation with Mr. Klein in which he told you that something was wrong in Rokoff's balance sheet, is that right? A. It wasn't before that.

Q. When was it, Mr. Haas? A. When I had completed the preparation of the consolidated statement and had it on my worksheets in pencil, and when I showed him those worksheets, that is when he told me that there was something wrong.

Q. Those worksheets are not the worksheets that are in evidence here, are they? A. No, sir.

Q. And you showed Mr. Klein the worksheets which reflected the Rokoff balance sheets, Government's Exhibit 381, is that right? A. Yes, sir.

Q. And at that time Mr. Klein told you that something was wrong with them in that a loan of $1.5 million wasn't

shown on the Rokoff trial balances and balance sheets? [8129] A. For Regan Potter, yes.

Q. For Regan Potter. A. Yes.

Q. That was the first you had ever heard of that loan, is that correct, so-called? A. Yes.

Q. And it wasn't reflected in your worksheets for that statement that you were drafting for Mr. Klein; you said that, right? A. It was not reflected.

Q. Where are those worksheets, Mr. Haas, that you drew, which did not reflect this loan of $1.5 million, which Mr. Klein said was mistakenly left out of Government's 381? A. In the first place, when he told me to make a correction, I made the correction right on those worksheets, so that if I had them now, those worksheets would reflect the $1.5 million, but we don't keep worksheets of that kind in our files for all of these years. I haven't got them.

Q. Do you know what happened to those worksheets? A. Just as all worksheets of all clients past a certain period are destroyed, they were destroyed. We keep the typewritten statement, copies of statements, [8130] but we don't keep the pencil worksheets.

Q. You don't keep the pencil worksheets of any of your computations or figures, is that right? A. Of any of our clients.

Q. Of any of the work you do for your clients. A. That's right.

Q. You don't retain those pencil worksheets? A. After a certain period they would clog up our files too much.

Q. What period of time, Mr. Haas? A. It depends upon the type of worksheet it is. For instance, if it is a worksheet with respect to a monthly audit, we will keep them for a year because once the annual report is typed, we

don't need the monthly figures. If it is a quarterly statement we will keep that for a year and the same with semi-annual. All others we might keep for two or three years.

Q. So that an annual—your pencil worksheets for an annual report you would normally keep for a period of two or three years; do I understand your answer correctly? A. Two or three, probably about three years.

Q. Three years. A. I would say so.

[8131] Q. Sometimes do you keep them longer than that? A. It depends upon the circumstances in any particular case.

Q. At any event, your testimony is that these worksheets with relation to the transaction about which we are now talking were destroyed after the passage of about two or three years after they had been drawn, is that right? A. I would say so, yes.

Q. So that that would have been sometime in either 1949 or 1950, is that correct? A. It could be '51, too.

Q. It could have been '51, too? A. Yes.

Q. By 1949, 1950 or 1951 you knew, did you not, Mr. Haas, that the Internal Revenue was interested in the collection of such revenues as were due upon the funds of the various Cuban and Panamanian corporations including Tivoli Trading Company, is that correct? A. I knew that the Revenue Service was interested in collecting taxes from Mr. Klein, his wife, and H. Harvey & Co.

Q. Didn't you know that they were interested in [8132] ascertaining—in the collection of revenues from these corporations as well? A. No.

Q. Did you not know that they were interested in the records of the various Cuban and Panamanian corpora-

tions insofar as they might have reflected moneys which were owed to Mr. Klein, Mr. Norgan, Mr. McLennan, Mr. I. J. Klein? A. I would assume that they would be interested in it, but if you are asking me whether I know that they were, I d' 't know.

Q. You say during the years 1949, 1950 or 1951 you were not aware of the fact that the Internal Revenue Service was interested in determining the revenues due the United States from Mr. Klein, Mr. Norgan, Mr. McLennan and others which had resulted from the Harwood venture, is that your testimony, Mr. Haas? A. Well, my testimony is this: that they never once inquired, to my knowledge—certainly not of me, and from what I have been told by Mr. Klein, they never inquired of him—for permission to examine any such records, if there were any. They certainly were in a position to do so if they wanted to.

[8133] Q. I wonder if I might ask you to confine your answers to what was requested of you, Mr. Haas. Your testimony is that you were never requested? A. I was never requested for any information, and if I were, I had the consolidated balance sheet, I had the trial balances, and that would constitute the same information that would appear on the worksheets, except that they were typewritten and the others were handwritten, and I didn't see any use in keeping the handwritten sheets. I did keep the typewritten sheets.

Q. As a matter of fact, Mr. Haas, I should like to come back to the question that I asked you, namely, that during the years 1949, 1950 and 1951 did you not know that the Revenue Service, the Treasury Department, was attempting to ascertain and collect such taxes as were due from the various individuals concerned in the Harwood

deal, arising out of the Harwood deal? Did you know that? A. I will repeat my answer. I knew that they were trying to collect taxes from H. H. Klein, from his wife and from H. Harvey & Co. I didn't know they were trying to collect taxes from I. J. Klein or Norgan up in Canada.

[8134] Q. And you knew, did you not, in that connection, Mr. Haas, that it would be of importance in ascertaining the amount of tax due from Mr. H. H. Klein to have any financial records or worksheets or other accounting records of these corporations available in determining his individual tax liability?

Do you understand that question? A. Yes, I knew that that was important and I had them available if they would ask me for them.

Q. In the preparation of worksheets, Mr. Haas, there are ordinarily notes that are contained on the accountants worksheets, is that correct? A. Ordinarily, yes.

Q. Would you tell us, please, what those notes consist of in the ordinary case. A. Where a trial balance contains four or five accounts of the same nature, an accountant will occasionally lump the four or five accounts into one figure and there would be a note to that effect on his worksheet, so that if he had to find out in subsequent years how he arrived at the one figure, he would know that it was the lumping of four or five figures.

Q. Yes. In other words, those notes explain certain techniques and accounting techniques used in [8135] the preparation of the various accounting reports prepared by him, is that right? A. Where necessary, yes.

Q. Yes. A. It isn't always necessary.

Q. Where it is necessary that is what they generally

reflect, what course the accountant has taken in preparing the accounting records, is that right? A. I wouldn't make that broad a statement. It depends. If I were preparing a certified statement I would have in complete detail every step I took with respect to the verification of the items on the statement, but if somebody handed me a set of figures like those trial balances and asked me to prepare a statement without verfication, without audit, and the preparation of that statement merely meant the transfer of those figures from one sheet of paper to another sheet of paper, there would be no need to indicate in later years how I did it.

Q. Does the typewritten copy of your worksheet in every case contain all the notes that appear on the handwritten copy of the worksheets? A. No.

Q. I have forgotten for the moment the technical [8136] term for these. I guess work papers. A. Work papers, yes.

Q. So that the typed copy of the work papers did not necessarily reflect all the accountant's notes that are on the handwritten copy, is that right? A. That's right.

Q. Do you remember whether in the case of Tivoli there were any handwritten notes? A. I never had any figures of Tivoli.

Q. I am sorry, you are quite right. In the case of the figures that are reflected in Government's Exhibit 371, the consolidated balance sheet, were there any handwritten notes on your worksheets in that case that were not reflected on your typewritten worksheets? A. I don't recollect any handwritten notes at all. I don't recollect them.

Q. Mr. Haas, during the years 1949, 1950 and 1951 did you not feel that those worksheets, the original longhand worksheets which led to the preparation of Govern-

ment's Exhibit 371, the consolidated balance sheets, should have been retained by you? A. No, sir, I didn't feel that. If I did, I [8137] would have retained them.

Q. Now, Mr. Klein started to use your office early in January 1947, is that right? A. Yes.

Q. He came to you and said he would like to use your office until he found one of his own, is that correct? A. That's correct.

Q. And he came there in January 1947 and stayed there for a period of years. When I say "stayed there" I mean under the circumstances which you have outlined from the witness stand. A. Yes.

Q. Is that correct. A. Yes, sir.

Q. He came there about once a week, you say? A. Once a week, sometimes twice a week, sometimes he would skip weeks if he were away.

Q. When you say he came there once a week, do you mean that he stayed there for a couple of days at a time or that he came there one day a week generally speaking? A. He would come in at noon one day. He might stay there that afternoon and then come back again [8138] the following day.

Q. And Mr. Rosenberg was with him, I think you said yesterday, just about every time? A. Generally he was with him all the time.

Q. Do you mean that he was generally with him or that he was with him all the time? A. I mean that when Mr. Klein came to my office in most instances Rosenberg was with him.

Q. And Mr. Silver and Mr. Rokoff came there frequently, is that correct? A. They came there occasionally.

Q. About how often would you say they came there, on an average? A. I would be guessing. It was just occasionally.

Q. What is your best recollection, sir? A. Once a month, twice a month, once every two months, something like that.

Q. And did they use the facilities of your office when they came there, typewriters and things of that kind? A. I think Rokoff did. I don't believe Silver did.

Q. Sometime in February 1947, after you had [8139] prepared these consolidated balance sheets, Government's 371, you had a conversation with Mr. Klein, is that correct, which resulted in your obtaining the draft in the amount of $35,000? A. Yes, sir.

Mr. Bender: That is objected to, your Honor.

A. I didn't obtain the check.

Mr. Bender: Excuse me.

Mr. Bauman: Let me rephrase the question.

Q. Which resulted in Compania Comercial La Ribera receiving a check of the Tivoli Trading Corporation, is that correct? A. Yes, sir.

Q. I should like you to tell me, please—— ?

The Court: As long as we are being technical, is it Tivoli Trading Corporation?

Mr. Bauman: Company, S. A. Thank you, Judge.

The Court: All right.

Q. What was your conversation with Mr. Klein about

that check, about that Tivoli check, Mr. Haas? A. He told me that he was planning—he had told me before that he was planning to go into [8140] business now that the Harwood deal was over. He said he had taken a liking to us, me and my partners, Schlesinger particularly—I don't know whether he knew me as well—and that he would like to have us a part of that business.

He told me that he was going to have his employee Roer transfer one of Roer's Cuban corporations to us, and that he would lend that Cuban corporation such capital to operate.

Q. Did he tell you at that time how much capital? A. I don't remember whether he told me at that conversation, whether I found out when he handed me the check. I am not sure.

Q. Now, as a matter of fact, you were the person who first rendered the tax opinions to Mr. Klein, is that correct? A. I rendered the tax opinions to Mr. Alprin in 1944 first.

Q. You know the two opinions I am talking about, don't you, Mr. Haas? A. Yes, sir.

Q. And you were the person who went down to see him in Baltimore in September or October 1946; is that right? [8141] A. Yes.

Q. And you were the person who went down to Baltimore again to see him in December of 1946 and obtained the information about his corporations, stockholders and directors; is that correct? A. Yes.

Q. And you were the person who obtained the figures, the Rokoff balance sheets from him and prepared the consolidated balance sheets, Government's Exhibit 371; is that correct? A. Yes.

Q. And you were the one who had originally before that sat down at his desk and figured up in September or October 1946 what his approximate share of the Harwood deal would be; is that correct? A. Correct.

Q. And as a matter of fact, you did personally all the accounting work or all this work that Mr. Klein spoke about in connection with the Harwood deal; is that correct? A. I don't understand your question. Will you repeat it?

Q. Mr. Mayers didn't do the work that was incident to the Harwood deal, did he? [8142] A. When you say incident to the Harwood deal, are you referring to that statement?

Q. Well, I will go through it with you.

Did Mr. Mayers render the opinion? A. He neither rendered the opinions nor——

Q. Of 1944 or 1945. A. No, sir; nor did he make out that statement.

Q. Did Mr. Mayers attend the meetings in Baltimore in September or December of 1946? A. No, sir.

Q. Did Mr. Mayers sit down at a desk in Baltimore and prepare the figures for Mr. Klein's share? A. No, sir.

Q. Did Mr. Mayers prepare these consolidated balance sheets? A. No, sir.

Q. You were the individual who did that; is that correct? A. Yes, sir.

Q. And Mr. Klein's dealings with the firm businesswise were with you, weren't they? A. Up to the first week in January 1947.

Q. And what happened during the first week of [8143] January 1947, Mr. Haas? A. He came to my office for the first time and I introduced him to my partner, Mr. Schlesinger.

Q. And then all three of you agreed that he might use the office; is that correct? A. Yes.

Q. And that was the first contact, was it, that Mr. Schlesinger and Mr. Mayers had with Mr. Klein? A. Mr. Schlesinger. I am not sure about Mayers.

Q. But that was certainly the first contact that Mr. Schlesinger had with Mr. Klein; is that correct? A. Yes, sir.

Q. So that actually what Mr. Klein said in February 1947 when he talked with you about taking one of Roer's corporations, was that he wanted you to make some money, he wanted to help you, Maurice Haas, make some money; is that correct? A. No, sir, that is not right.

Q. He wanted to make the firm of Haas, Schlesinger & Mayers make some money, is that it? A. That's correct.

Q. Although he had met two of your partners, [8144] probably, for the first time within a month before that; is that correct? A. Yes, sir. He is a man of quick likes and dislikes.

Q. And he quickly liked your two partners; is that right? A. And me, too.

Q. And you, too. A. Yes.

Q. And he told you that he wanted all three of you to make some money; is that correct? A. Correct.

Q. That corporation, La Ribera, was subsequently transferred to you; is that correct? A. By Mr. Roer.

Q. By Mr. Roer. A. Yes.

Q. Did Mr. Klein ever, in your presence and that of Mr. Roer, tell Mr. Roer to give you one of his corporations? A. Not in my presence, no.

[8145] Q. Not in your presence? A. No.

Q. Did Mr. Roer transfer one of his corporations to you? A. Yes, he did.

Q. That was the one that was named Comercial La Ribera? A. Right.

Q. Had you ever met Mr. Roer before then? A. Yes, of course.

Q. When had you met Mr. Roer for the first time? A. Sometime in the middle of 1946 when we did an audit for Cambridge, in which Mr. Roer was interested.

Q. So you knew Mr. Roer at that time about five months, is that correct? A. If you want to be technical, let us see, it might have been seven or eight months.

Q. Mr. Roer transferred this corporation to you? A. Yes.

Q. Tell me, please, the circumstances under which the actual transfer of the corporation took place. What was your conversation with Mr. Roer about the transfer of La Ribera?

Mr. Bender: May the record be clear as to which corporation we are talking about. I think you left off with Cambridge and then you asked about transferring the corporation.

[8146] Q. You understood we were talking about Ribera, Mr. Haas? A. Yes.

Q. No question in your mind about it? A. No.

Q. Go ahead. A. Sometime in February, 1947, Mr. Roer came to my office with an envelope, and he said H. H. had told him to transfer one of his corporations to us, and here was an envelope which contained the papers that he had received from his Cuban attorneys with respect to the corporation. He had selected at random a corporation and it happened to be La Ribera. He said, "What am I to do with this?"

I told him that he would have to sign resignations and transfers of subscriptions for himself, and get members of his family who also were officers to resign, and I believe I even gave him the forms of resignation which he took back with him, brought them to me or sent them to me shortly thereafter, and I had in my possession an envelope containing papers with respect to La Ribera, for which I paid him $800.

Q. In cash? A. In cash. One-third of which each of my partners and I contributed.

Q. You paid him the $800 in cash? [8147] A. Yes.

Q. He asked for the money in cash? A. Yes.

Q. And you paid him in cash? A. Yes.

Q. And you got one-third of $800 in cash from each of your two partners, right? A. Right.

Q. Did you suggest to Mr. Roer that you would prefer to buy that corporation, paying for it with a check of Haas, Schlesinger & Mayers? A. Not particularly. It did not mean anything to me one way or the other at that time.

Q. I would like to direct your attention, please, to the time when you actually got the check for $35,000, Mr. Haas. When was that to the best of your recollection? A. The day that the check was dated.

Q. That was sometime in February, 1946, is that right? A. No, sir, 1947.

Q. 1947? A. Yes.

Q. You went down to Baltimore at Mr. Klein's request? A. Yes.

Q. Tell me, please, to the best of your recollection what happened when you got there? A. After the usual social amenities, Klein told [8148] me that he had a check for me made payable to La Ribera for $35,000.

Q. Will you excuse me if I interrupt you for a moment. Who else was present on this occasion? A. Rosenberg.

Q. Mr. Rosenberg? A. Yes.

Q. Was Mr. Roer there? A. No, sir.

Q. Would you like what you said before re-read? A. No, I know what I said.

Q. Go ahead. A. He told me that he thought that was sufficient capital to get La Ribera started his business, that he would put business into the corporation, and when it earned sufficient money to provide its own capital, I could return the $35,000 to him. When I say "I", when La Ribera had the money it could return the money to him. He wouldn't lend the money to me. I wouldn't borrow money. That is the substance of it.

Q. That is substantially it? A. Yes. We talked about other things.

Q. Did he hand you a check at that time? A. Yes, he did.

Q. Was the check already made out when you got there? A. It was made out to La Ribera, because, [8149] previous to that, as I said before in my testimony, on one of his visits to New York either I told him the name of the corporation or Roer told him. One of us told him the name of the corporation.

Q. How did that come about, Mr. Haas. Did he ask what was the name of the corporation that Roer transferred to you? A. I don't know whether he asked me that or whether he didn't. It seems to me—I am trying to remember back these years—it seems to me I may have told him that I received these papers from Roer and this is the name. It may be that he might have been told that by Mr. Roer, that Mr. Roer handed him the papers.

Q. Did you say "You asked me to get one of Al Roer's corporations, and I got such corporation, and the name of it is La Ribera"? Is that substantially what happened? A. I don't know. If I knew definitely whether I told it to him or Roer told it to him, I might be able to answer that question.

Q. You do not remember the circumstance under which Mr. Klein first heard that the name of the Roer corporation which you got was La Ribera? A. I have no recollection.

[8150] Q. You have no recollection at all? A. Not particularly.

Q. You do not remember where you told it to him, when, and you do not recall what was said on that occasion? A. You are assuming I told it to him. I am trying to say to you that I don't know whether I told it to him or Roer told it to him. It wasn't particularly important.

Q. You have no recollection of telling it to him at all? A. I have no recollection of not telling it to him. I don't know whether I told it to him or Roer did. It wasn't important.

Q. Do you have any recollection, Mr. Haas, of having told Mr. Klein the name of the corporation which Roer had transferred to you? A. No, I have no recollection.

Q. And you have no recollection of any conversation pertaining to that tranfer, do you, beyond the one that Mr. Klein told you to get one of Roer's corporations? A. He didn't tell me to get one of Roer's corporations, he told me he was going to tell Roer to give me one of his. We talked about that when he gave me the check.

Q. Beyond those two discussions, you do not [8151]

remember any conversation with Mr. Klein about the transfer of La Ribera to you, is that right? A. That's right.

Q. When you got down there on this occasion, the check was already made out in the sum of $35,000 to La Ribera? A. Right.

Q. At the time he gave you that $35,000 check, and just to keep the record straight, when I say he gave you the check, I am saying that Tivoli gave La Ribera a check for $35,000, what did he tell you to do with it, if anything? A. He told me to take it up to Canada, Toronto, deposit it there and hold it until the business was ready to get started.

Q. Did he tell you why he wanted it deposited in a Canadian bank instead of a New York bank? A. Yes, he mentioned that he was planning to do most of his banking for that proposed business in Canada.

Q. That money was frozen when you got up there? A. Two months later.

Q. Did you employ anybody to obtain the release of that money? A. No, sir, I did not.

Q. Did Mr. Klein to your knowledge employ anybody [8152] to obtain the release of that money on your behalf? A. I will have to answer that this way: Mr. Klein retained a Canadian attorney to get the release of his money and at the same time to procure the release of all other funds that may be up there, in my account or Mr. Alprin's.

Q. Did Mr. Klein discuss that with you before he obtained the services of this attorney to procure the release of the money? A. When you say discuss that with me, just what do you mean?

Q. I will tell you. Did Mr. Klein tell you that he was

retaining an attorney in Canada to obtain the release of the frozen funds of La Ribera? A. He didn't specifically say that he was retaining an attorney to unfreeze La Ribera's funds, he said that he had retained an attorney to unfreeze all of the bank accounts.

Q. Did you understand that to mean including La Ribera? A. Oh, yes.

Q. Then the money was subsequently unfrozen, is that right? A. Yes.

Q. It was released, in other words. What happened at that time? Did you tell Mr. Klein that you [8153] wanted to return the money? A. Return the loan of $35,000?

Q. Yes. A. Yes, I did.

Q. Tell me, please, what was said about that or as exactly as you can now remember. A. When I first got the news that the accounts were unfrozen, I think it was the latter part of January, 1949, when I got the news. By that time I was quite sure in my own mind that there wasn't going to be any new business that Mr. Klein was going into, and at one of his visits to my office I mentioned the fact that "Now you are not going into any business, at least in the foreseeable future," I wanted to return the loan to him, since there was no occasion for our keeping it any longer.

Q. What did Mr. Klein say about that? A. He said, "I don't want any part of it. You keep it."

Q. I believe you testified on direct examination that in addition to that $35,000 which you were authorized to keep that you received subsequent fees of $50,000, is that right? A. Yes.

Q. I understood you to say, and correct me if I am wrong, that that was paid to you in two $25,000 payments, [8154] is that correct? A. Correct.

Q. When did you receive the first $25,000? A. Sometime in 1951, I think it was.

Q. When did you receive the second $25,000? A. Sometime in January, this year.

Q. Was that a payment to the firm of Haas, Schlesinger & Mayers? A. Was which?

Q. The $25,000 that you received in 1951? A. Yes, it was.

Q. Was the $25,000 that you received in 1955 such a payment? A. No, that was made payable to me with the full knowledge of my former partners.

Q. In addition to that $50,000, you did over the years, Mr. Haas, receive other accounting fees for normal audit work? A. For the corporations in which he was interested.

Q. Will you tell me, please, from the years 1946 until the present time the total amount of accounting fees paid to your firm or to you by Mr. H. H. Klein or his enterprises? A. I couldn't possibly do that without referring to our firm records.

Q. You have no recollection of the amount of such [8155] fees, is that right? A. No, sir.

Q. You stated yesterday and again today that you have never before this trial, and correct me if I am wrong, seen any of the books of any of the Harwood Corporations or what we in this trial—of the corporations about which we talked on this trial, until this trial started, is that right? A. The Cuban and Panamanian books, I have never seen any of those.

Q. You have never seen any of the books of the Cuban or Panamanian corporations about which we have talked in this trial? A. That's right, I have never seen them, except in this trial.

Q. By April 3, 1947, Mr. Klein of course was appearing at your office just about once a week as you previously testified, with Mr. Rosenberg, is that right? A. Yes.

Q. You have heard Miss Bennett testify that this entry, consisting of part of Government's Exhibit 379, the book of Regan Potter, is in her handwriting (handing to witness)? A. Yes, I remember her testimony.

Q. Do you recall, Mr. Haas, that Government's Exhibit 379 is the book of Regan Potter? A. That's [8156] correct.

Q. And that it was stipulated that that was a bound book. I ask you, Mr. Haas, did you at any time see the book of Regan Potter in the office of Haas, Schlesinger & Mayers? A. I answer you, I never did.

Q. And that if Miss Bennett made that entry, if in fact that entry is Miss Bennett's handwriting, she identified it, that you never knew about it? A. No, sir, if I had known about it, I would have fired her on the spot.

Q. How long had she been employed by you, Mr. Haas? A. At that time in 1947?

Q. Yes. A. I don't remember. She had been with us a number of years before and after.

Q. She left of her own volition, did she not? A. Yes, she did.

Q. Are you familiar with her handwriting, Mr. Haas? A. It looks like her handwriting, yes.

Q. In the light of her identification of it as her handwriting, you would not dispute it, would you? A. I would not doubt it for a moment.

Q. So she is not mistaken in that part of her testimony in your opinion, Mr. Haas, wherein she says [8157] that that entry in the book of Regan Potter is made in her handwriting? A. No.

Q. The particular in which you think Miss Bennett is mistaken is when she says that it is her recollection, and you correct me on the testimony if I am wrong, that the instruction to make that entry was received from you? A. That's right, and in her testimony she was not too positive about it, if I remember it correctly.

Q. As I remember it, Mr. Haas, she said it was her recollection or the best of her recollection that she made that entry upon instructions from you, is that correct? A. That recollection is the mistake I was talking about.

Q. You and Miss Bennett have never had any unpleasantness between you, isn't that correct? A. That's correct.

Q. She worked in your office on pleasant terms? A. Yes.

Q. And she left your office on pleasant terms, is that correct? A. That's correct.

Q. And you know of no reason, Mr. Haas, that she would have for coming here and misrepresenting about this, isn't that a fact? A. No, she would not consciously [8158] misrepresent.

Q. There has been some testimony in this case, Mr. Haas, about the Scotch deal. Was that the deal that you and Mr. Klein were going to go into together, a Scotch deal? A. I was not going to go into business with Mr. Klein on any particular kind of deal. He just said he was going back into the whiskey business.

Q. Didn't you understand when he asked you to take over one of Roer's corporations and when he loaned money to your firm that he did it for the purpose of putting your corporation in funds to participate in that subsequent business that he was thinking about? A. In that subsequent business, yes.

Q. You understood that? A. Yes.

Q. Was that subsequent business, Mr. Haas, concerned with a Scotch deal? A. I don't know.

Q. You have heard Mr. Klein speak of a Scotch deal, isn't that correct? A. I heard him mention on his examination here something about a Scotch deal.

Q. You had heard of it before that, had you not, Mr. Haas? A. Mr. Klein was going into a Scotch [8159] deal? Never did.

Q. Were you asked these questions in the grand jury and did you make these answers:

> "Q. Well, did you have any further knowledge that this deal with respect to the Scotch was still pending? A. I am not sure. I know in 1948 it was still boiling.
>
> "Q. But you do not remember whether in February, 1949, you had been told that the Scotch deal was off or had fallen through? A. I am not sure."

Were you asked those questions and did you make those answers? A. Yes, that was the UDL Scotch deal, not Mr. Klein's.

Q. So when you answered me before by saying, and again correct me if I am wrong, that you didn't know anything about any Scotch deal in which Mr. H. H. Klein or you didn't know anything about any Scotch deal of Mr.

H. H. Klein's, you in your mind excluded this particular transaction to which I have referred because it was a UDL Scotch deal, is that right? A. The Scotch deal that you asked me about referred to Mr. H. H. Klein. I had never heard that H. H. Klein was going into any Scotch deal. That was your question [8160] and my answer.

Mr. Bauman: May I have that last answer reread, your Honor?

The Court: Read it.

(Answer read.)

Q. In so far as you knew, Mr. H. H. Klein didn't have any interest in the Scotch deal about which I have just asked you, is that right? A. You have asked me about two Scotch deals. Which are you referring to?

Q. I have only asked you about one, Mr. Haas, and I am only asking you about one. A. If Mr. Klein as a stockholder of UDL could be said to have an interest in any deal that that corporation had, he had an interest, but he was not going into the Scotch business as far as I knew personally.

Q. Beyond the fact of his participation as a stockholder in UDL, is that your point? A. Yes.

Q. Mr. Haas, you knew, did you not, that Mr. Klein had not divulged the names of the recipients of the drafts, by the drafts I mean those drafts drawn to Economica Agencias and Compania Fernandina? A. Yes.

[8161] Q. Had you discussed it with him? A. At the time that we were talking about the interrogatories about which you were questioning yesterday, that question came

up and he told me that he wasn't going to divulge names because it had nothing to do with is own tax problems.

Q. He told you at at that time that he was not going to divulge the names because it had nothing to do with his personal tax problems, is that right? A. That's right.

Q. Did you at any time participate in the framing or asking of the questions in the interrogatories? A. I don't think I participated in the framing or drafting. I participated in the discussions about them.

Q. Were you one of those who advised Mr. Klein in relation to the answers to those interrogatories? A. No. Messrs. McGuigan & Kilcullen advised him with respect to those answers.

[8162] Q. And you just sat and listened to those discussions, sir? A. I put an oar in once in a while.

Q. You participated in the discussions with relation to the answering of those interrogatories; is that right? A. Yes.

Q. Mr. Haas, you remember when you were interrogated by the Revenue Service, do you not? A. Yes, sir, I sure do.

Mr. Bauman: I want to take a moment to check something, sir.

I will pass on to something else while I am checking that.

Q. Did you ever again attempt to discuss with Mr. Klein the Alprin draft of 1947, after he told you, "If you have any questions to ask about it, speak with Mr. Alprin"? A. No, sir, I never did.

Q. And so, in the preparation of Mr. Alprin's return, you knew, did you not, that Mr. Klein had not supported

the information that Mr. Alprin had given you about that draft; isn't that correct? A. No, it is not. He hadn't denied it, either.

[8163] Q. You understood, did you not, that he didn't want to talk to you about it? A. He just didn't want to talk about it, that's all.

Q. And that created no question in your mind with relation to the holding of the draft by Mr. Alprin, did it? A. No sir, it did not.

Q. Did you ever see any written restrictions on the use of that draft? Do you know whether there were such written restrictions on the use of the Economica Agencias draft? A. I never heard of any written restrictions.

Q. You became an escrow holder of Mr. Koerner's check; is that right? A. I and three others.

Q. At whose request did you become an escrow holder of Mr. Koerner's check? A. Mr. Alprin.

Q. Had you ever discussed that with anybody but Mr. Alprin? A. Discussed it with my partner, with Mr. Koerner's lawyers.

Q. You knew, did you not, that at the time you [8164] took that check and put it in a safety deposit box—and I call it a check; it was a bank draft, wasn't it—— A. Yes.

Q. That was sometime in what year, Mr. Haas? A. My recollection is that it was the end of 1950 or possibly the beginning of '51.

Q. At the end of 1950 or the beginning of 1951, Mr. Haas, you knew perfectly well, didn't you, that the Revenue Service was interested in collecting the revenues from the individuals who had received money from the Harwood venture, didn't you? A. I know the Revenue Service is interested in collecting its revenues from anybody that earns income. There was nothing specific.

Q. That is generally true, but I am asking you, sir, you knew in late 1950 or early 1951 that the Revenue Service was specifically engaged in attempting to determine and ascertain the amount of tax due from the individuals who had received money from the Harwood deal. A. No, sir, I never knew that; outside of the normal tax examinations that Mr. Alprin had from year to year there was no other indication that I would [8165] have or that I knew.

Q. You knew, did you not, about the jeopardy assessments? A. That was against Mr. Klein.

Q. But you knew about that, did you not? A. Yes, I did.

Q. So it was perfectly clear to you from 1948, before you even filed that 1947 tax return, that the Internal Revenue Service was interested in what happened to the proceeds of the Harwood Whiskey situation with a view to determining whether or not the taxes due by the individuals who received that money were properly computed and paid to the Treasury Department. You don't doubt that, do you? A. Yes, sir, I doubt that very much. The only ones I knew they were interested in were Mr. Klein, his wife, and the H. Harvey Company.

Q. You did not feel as an accountant and as a tax expert, Mr. Haas, that at the time of those jeopardy assessments the Revenue Service was interested in what happened to the proceeds of the Harwood Whiskey deal? A. I don't know what that question means.

Q. Would you like it repeated, Mr. Haas? Do [8166] you think you would understand it better if you heard it again? A. I would like it reframed.

Q. I ask you as an accounting expert and as a tax expert whether you did not know, Mr. Haas, in 1948, when the Internal Revenue Service filed the jeopardy assessments which are in evidence here, that the Treasury Department and its Internal Revenue Service were then and there engaged in the determination or in the investigation of the total amount of income arising from the Harwood deal and the payment of the taxes due on that income by the indiduals who received it. A. Only as with respect to Mr. Klein, his wife, and the H. Harvey Company.

Q. And that was because the jeopardy assessments were only made out to them; is that right? A. That's right. If they wanted to collect from Alprin they would have served him with a jeopardy assessment, too.

Q. If they knew about Mr. Alprin's draft they would have served him with a jeopardy assessment, too; is that correct? A. That's correct.

[8167] Q. And, of course, if they didn't know about the payment of $35,000 to La Ribera, they couldn't very well, Mr. Haas, assess any tax on it, could they? A. I reported it in '49.

Q. I say but if they didn't know about it they couldn't assess tax on it; isn't that right? A. If they don't know it, no. Unless the taxpayer reports it.

> Mr. Bender: Your Honor, might I at this time object to this because the evidence in the record indicates quite clearly that in July, I think it was, of 1947, the Bureau of Internal Revenue served a subpoena upon a bank wherein it listed in the subpoena the names of every one of these corporations, and I

think Mr. Bauman's question in that regard, that the Bureau didn't know about these corporations, is improper and objectionable.

The Court: Overruled.

2.15.

(Recess until 2.15 p.m.)

* * *

Afternoon Session, 2:15 P. M.

[8177] MAURICE A. HAAS resumed.

Cross-examination Continued by Mr. Bauman:

Q. Did I understand you to say this morning, Mr. Haas, that when the jeopardy assessments were served you received copies of them? A. Yes.

Q. And did I understand you to say this morning that from that the only information you gained was that the Internal Revenue Service was inquiring into the income of Hyman H. Klein, Mrs. Klein and H. Harvey Company? A. Well, I also got the further information that having made assessments we were to assume that they did know what the income of those three were, upon which they based those assessments.

Q. Do I understand that by your answer you meant to indicate that when those jeopardy assessments were levied that you felt that there was no relation between those jeopardy assessments and the corporations involved in the Harwood transaction? A No, I wouldn't say that.

Q. Well, when the jeopardy assessments were levied and you heard about them, you knew then that the Revenue [8178] Service was at least to the extent of Hyman H. Klein interested in his income from the Harwood venture,

is that correct? A. I would rather say that I assumed from that, not that I knew that. I assumed that they were interested.

Q. Was that indicated to you by the jeopardy assessments in your capacity as a tax expert? A. There is nothing in the jeopardy assessments that indicates what it is for at all. It merely says that—it gives you the year and the amount of the proposed tax. It doesn't tell you what income it is levied on.

Q. Did you draw that significance from it, Mr. Haas? A. Yes, I did.

Q. Now, as a matter of fact, in 1949, when the answers to the interrogatories were prepared, Mr. Haas, you told us this morning that you sat in on some of those discussions, isn't that correct? A. Yes.

Q. And when the answers to the interrogatories were discussed, I am sure there was discussed in such conference, wasn't there, what was the nature and amount of funds paid over by Tivoli Trading Company to Nancy Trading, Compania Comercial La Ribera, La Economica [8179] Agencias and Compania Exportadora Fernandina; is that correct? A. That's correct.

Q. So that in 1949, Mr. Haas, you knew that the Internal Revenue Service was in the exercise of its function attempting to find out what part of the proceeds of the Harwood deal had been channeled to these corporations and through these corporations to the individuals who were in interest in those corporations?

Mr. Bender: That question is objected to, your Honor, on the ground that the purpose of the negotiations, as I understand it, with the Bureau of

Internal Revenue from 1948 to 1951, during the course of which I understand these interrogatories were submitted to the Bureau, was for the purpose of settling and agreeing upon an amount of the tax that had been the basis of the jeopardy assessment on Mr. Klein and H. Harvey & Company, and it was for that limited purpose and not in the nature or the function of the Bureau of Internal Revenue that it might normally have to ascertain the true tax liability of any taxpayer.

The Court: Well, it was in connection with settlement discussions involving Klein's tax.

[8180] Mr. Bender: That is correct.

The Court: Overruled.

Q. Now, would you answer the question, Mr. Haas. A. I would like to have it re-read.

(Question read.)

A. They were trying to find it out for Mr. Klein, not for me. I had no objection at the time we discussed these interrogatories. As a matter of fact, I urged Mr. Klein to tell them whatever there was to be told about La Ribera, but he was answering them, not me.

Q. I think I asked the question of whether you knew at that time of the interest of the Internal Revenue in that part of the proceeds of the Harwood venture which had been paid to these corporations which I have named, and through them to the individuals who owned those corporations. A. I knew they were interested.

Q. Sir? A. I knew they were interested because they asked the question.

Q. Now, when did you first hear that Morris Alprin had received Irving Koerner's draft? A. I don't remember.

Q. Did Morris Alprin tell that to you, Mr. Haas, when he told you about his own draft back in 1947? [8181] A. Morris Alprin told it to me, but I don't remember when.

Q. I am asking, did he tell it to you at the time he first told you about having received a draft from Mr. Klein in 1947? A. I have to repeat my answer, I don't remember when. I know he told it to me.

Q. You have no recollection, then, as to what time it was that he first told you that he was holding a draft of Koerner's, is that right? A. I have no recollection as to when it was.

Q. When was the first time you heard about Mr. Glassgold's attempts to secure the draft from Mr. Alprin? Did he discuss them with you? A. I heard that in 1950 from Mr. Alprin.

Q. Was it in 1950, Mr. Haas, that you took over the possession of what I shall call the Koerner draft, which was made out to Economica Agencias? A. Either in 1950 or 1951 I and three other men took over possession.

Q. Now, what you did, Mr. Haas, was to take a draft, and by "you" I mean you and three others, for $264,000, is that right? A. Yes.

Q. That was a bank draft? A. Yes.

[8182] Q. And it was made out to La Economica Agencias? A. Yes.

Q. Did you put that in a safety deposit box in New York City? A. Yes, sir.

Q. And was the box maintained in your name and that of the other escrow holders? A. Yes, the four names.

Q. And that is where you held that draft for a period of how long? A. About a year. Maybe a month or two longer.

Q. And did you at any time suggest——

Mr. Bauman: Withdrawn.

Q. You have held escrow funds before, have you not, Mr. Haas? A. Yes, I have.

Q. And is it your custom to hold escrow funds in a safety deposit box or do you have an escrow account in a bank where you deposit escrow funds and hold them? A. The few times that I have held funds I have held them in a bank.

Q. In an escrow account in a bank in your name, is that right? A. In the name of an escrowee.

Q. Yes; neither a corporation nor an individual, is that right? A. Yes.

Q. Now, you knew, Mr. Haas, didn't you, that [8183] in holding that draft made out to La Economica Agencias, in a safety deposit box, at a time when the Revenue Service was attempting to determine the income of the persons in interest in La Economica Agencias, you knew that your action in putting it into a safety deposit box at that time would impede the Revenue Service, didn't you? A. There is absolutely no connection between holding the check in a safe deposit box and impeding the Revenue Service.

Q. Well, we are agreed, are we not, Mr. Haas, that there was no bank record during that year in which you held that draft in the safety deposit box in the bank, showing a deposit of any draft in that amount? A. It couldn't have been deposited if I held it and my associates held it.

Q. And during the period it was so held, there was no record, no bank record of any kind, to your knowledge? A. Yes, there was.

Q. Of that draft? A. Yes, there was.

Q. Now, tell me, Mr. Haas, what that was during the period you held it? A. The bank that issued the draft had to have a record of it.

Q. That was the Royal Bank in Toronto? [8184] A. Yes.

Q. And with respect to banks in the United States, or more particularly the bank in which you held it, there was no such bank record, to your knowledge, was there? A. No, I don't see how there could be.

Q. Did you ever discuss with Mr. Klein, Mr. Haas, the fact that you were holding Koerner's draft? A. I don't think so.

Q. You have no recollection of that, is that correct? A. That's correct, and from that time I saw Mr. Klein very rarely.

Q. From what time was that, sir? A. 1951, because I think that he was building a home in California, and he spent a great deal of time there, and then the times that he did come in, into New York, he was too busy with other things.

Q. You have no recollection, Mr. Haas, of mentioning the fact that you were holding the draft of $264,000 of Koerner's in escrow with Glassgold and two other people? A. I have no recollection of talking to him about it.

Mr. Bauman: Will the Court give me just one moment?

Q. Mr. Klein told you, did he not, at one time——

[8184a] Mr. Bender: What page are you referring to, Mr. Bauman?

Mr. Bauman: I haven't referred him yet to any particular page, but I will be happy to call it to your attention—4709.

Mr. Bender: You were looking at it and I just wondered.

[8185] Q. Mr. Klein told you at one time, did he not, or more than one time that it was a good thing that these checks or drafts were being held because in case he paid the tax on the whole amount he could get the money back from the individuals who were holding these drafts? A. Yes, I so testified.

Q. Here at this trial? A. No, in my statement to the Internal Revenue Bureau.

Q. Can you tell me, please, when it was that such a conversation took place? A. Sometime during the latter part of his negotiations or his attorney's negotiations with Internal Revenue for a settlement. It looked as if the tax case was going to be settled and a figure arrived at, and it was my understanding that Klein was attempting to include these checks in that settlement and pay a capital gains tax on those amounts, that he was glad that the checks were being held so he could get the tax back that he was going to pay on them.

Mr. Kiendl: We move to strike out regarding his impression.

[8186] The Court: Will you read the answer back, please.

(Answer read.)

The Court: When you said "impression" you meant "understanding"?

Mr. Kiendl: Yes.

The Court: Was that just an understanding in your own mind or was that something Klein said to you?

The Witness: That was the result of a discussion between Mr. Klein and myself.

Mr. Kiendl: I move to strike it out.

The Court: Strike it out.

Q. Can you tell us to the best of your recollection what the discussion was? A. There was no one particular discussion. During the course of the negotiations for a settlement of the tax case, all phases of the settlement were discussed, and at one of those times or a number of those times, Mr. Klein said that he was endeavoring to settle his tax case, and at the same time to include—let me call that Koerner, Alprin and Roer checks—as part of that settlement, and pay a capital gains tax on them.

[8187] Q. What did he say about—— A. He was glad the checks were being held so that the tax he was going to pay on those amounts could be refunded to him.

Q. When you just testified to the Koerner, Roer and Alprin checks, did Mr. Klein in that conversation refer to the La Ribera check? A. Oh, no. I wasn't holding the La Ribera check. That was cashed in 1949.

Mr. Baum: I have no further questions, your Honor.

By Mr. Kiendl:

Q. Mr. Haas, you were asked a number of questions either on your direct examination or on your cross-examination by Mr. Bauman about various opinions you gave

regarding the taxability of income of these Cuban and Panamanian corporations.

Do you recall that? A. One Cuban corporation, Agencias Destiladores.

Q. Agencias Destiladores? A. Yes.

Q. Those questions involved three opinions that you rendered, did they not: one was Government's Exhibit 8, one was Government's Exhibit 358 and the third was [8188] the one that was introduced during your direct examination, your Exhibit FD.

Do you remember those three opinions? A. I remember the three opinions, but I don't remember the numbers.

Q. You don't remember the numbers, of course, but assuming I gave you the exhibit numbers correctly. A. Yes.

Q. So that we are sure we are talking about the same thing, the three opinions that I referred to are these three I hand you: Exhibit 8, Exhibit 358 and part of Defendant Haas Exhibit FD, which is the last page (handing). A. Yes, sir.

Q. You were asked by Mr. Bauman whether or not in writing the first two opinions you had before you the contract between R. C. Williams and Agencias Destiladores of April 18, 1944 and parts of the supplemental agreement of April 20th, Government's Exhibit 5. Do you recall that generally? A. I also had before me a proposed——

Q. I did not ask you that. Did you have those two documents before you? A. I was also asked if I had the proposed [8189] contract before me in connection with the 1944 examination.

Q. What I am trying to get at, Mr. Haas, there has been some suggestion or intimation that the letter agreement, supplementary letter agreement of April 20, 1944,

Government's Exhibit 5—you know the letter I refer to——
A. Yes, sir.

Q. —was not brought to your attention when you prepared and rendered your original opinion in April 1944. A. That's right.

Q. That it was not brought to your attention when you prepared the later opinion in February 1945? A. That's right.

Q. And you were asked questions about that and denied having seen that supplemental agreement at the time you prepared those two opinions? A. That's correct.

Q. When you prepared this third opinion, you stated, did you not, "The principle which I stated in my letter of April 17, 1944, that the place of sale fixed the source of income, still holds good."

Do you recall stating that in your opinion? [8190] A. Yes, sir.

Q. You stated in answer to some question either from Mr. Bender or Mr. Bauman that the opinions that you rendered, the two prior opinions, were your honest opinions at the time you rendered them. A. Yes, sir.

Q. And they still remain your honest opinion? A. Yes, they do.

Q. And this letter I read from, was that your honest opinion, the one of May 1, 1945? A. Yes, it was.

Q. Is that still your honest opinion? A. Yes.

Q. The principle you refer to is the principle that the income of a foreign corporation, earned in a foreign country, is not taxable in the United States; isn't that the principle? A. Yes.

Q. That principle you expressed or attempted to express

in your original opinion of April 20, 1944, did you not? A. I expressed it.

Q. You expressed it? A. Yes.

[8191] Q. You attempted to re-express it in your later opinion of February 27, 1945? A. I believe I expressed it.

Q. And you expressed it specifically on May 1, 1945 in this opinion? A. Yes, sir.

Q. You were asked when if ever paragraphs 1 and 2 of the supplemental agreement, the supplemental letter of April 20, 1944, between R. C. Williams and Agencias Destiladores came to your attention, and I think you told us that when you were examined by Mr. Victory and Mr. McCarthy in 1952 they showed you that document. A. Right.

Q. That is correct, is it not? A. Yes.

Q. Up to that time you had never seen it? A. Not that I recall.

Q. May you have been mistaken and seen a copy of it at the time you prepared your original opinion, the time you prepared the second opinion or the time you prepared your third opinion? A. Positively not.

Q. When you saw it in 1952, when Mr. Victory [8192] showed it to you, you read it, did you not? A. Yes, I did.

Q. And you read it in its entirety? A. Yes, I did.

Q. And here in court you read paragraphs 1 and 2 of it at Mr. Bauman's request, did you not? A. Yes, I did.

Q. I show you a copy of it. Paragraph 1 is the paragraph that refers to the approval of salesmen by Agencias, does it not? A. Paragraph 1 provides for the payment of

a brokerage or selling commission of 60 cents, with brokers and selling agents selected by it, "but no such broker or selling agent will be selected by the agent unless and until the written approval of the supplier is first obtained."

Q. It does contain a provision for the approval of the salesmen by the supplier, Agencias, and that is in paragraph 1? A. Yes, sir.

Q. In paragraph 2 it gives the Agencias corporation the refusal of either a wholesale customer or the amount of merchandise to be sold to a wholesale customer? A. Right.

[8193] Q. And those are the two paragraphs that Mr. Bauman had you read? A. That's right.

Q. But you read the entire document when it was shown to you by the Internal Revenue agents and you have read and reread it many times prior to taking the stand in this case; is that right? A. Yes, sir.

Q. Now I want to ask you, Mr. Haas, if those paragraphs had been called to your attention by anybody at any time would they have changed, altered or modified the opinions that you expressed in any way, shape or manner. A. My off-the-cuff opinion is that they would not have changed it, that the principle outlined in my letter of May 1st was not violated by that supplemental agreement.

Q. When you say your off-the-cuff opinion, you do not mean that, do you? A. Yes. I haven't researched it.

Q. However, you gave it serious thought? A. As to its effect on the original?

Q. Yes. A. No, nobody asked me.

[8194] Q. Didn't somebody ask you at any time prior to your testifying here as to what effect if any it would

have had on your three opinions if you had had the provisions of the supplemental contract before you? A. I was first asked that in Internal Revenue and later they waived it, so I never did look into it seriously.

Q. When you say that, you mean you did not make any additional research of the authorities? A. That's right.

Q. However, you had researched the authorities very carefully before you rendered your opinion in April 1944, in February 1945 and in May 1945? A. Yes.

Q. And amongst other cases that you found and that you referred to were the Ronrico case and the East Coast Oil Company case? You recall those cases, don't you? A. Yes.

Q. You did all your own research individually, you did not have your accountants do it for you or the typists in the office, you did it yourself? A. Yes, I did

[8195] Q. In the light of those opinions do you tell us now off-the-cuff or otherwise, Mr. Haas, that if you had the information before you in connection with paragraphs 1, 2, 3, 4 or 5 of the supplemental letter, it would have changed or altered or modified your opinion in any shape, manner or form? A. Off the witness stand or on and at first blush I don't think it would have changed a word of those opinions. However, I would like to look into the question of whether or not those activities would make Agencias a resident foreign corporation, and I think in my own mind there is a distinction between a resident and a non-resident corporation as to the taxability of all or part of its income.

Q. When you give that opinion off the witness stand and off the cuff, it is the best opinion you can give us under oath of your practice of accountancy and particularly tax accountancy since the year 1915? A. 1916.

Q. Ever since the first income tax law went into effect? A. Yes, sir.

Q. Mr. Haas, up until your visit to Baltimore in October or September 1946, you had never met Mr. [8196] Klein at all so far as you recall? A. That's right.

Q. And up to that time you had met Mr. Roer, had you not? A. Yes, I had.

Q. And you had met him in connection with some professional services that you had rendered to him at his request? A. Yes, sir.

Q. He was one of the clients or customers of your firm? A. Client.

Q. A client of your firm. A. Yes.

Q. And up to that time, September or October of 1946, you had met Mr. Alprin? A. I want to modify my last answer. He was not a client of our office. A corporation in which he was a stockholder was a client in our office.

Q. A corporation of which he was the principal stockholder? A. When that corporation became our client he was not a principal stockholder.

Q. That was the corporation, the name of which [8197] was Cambridge Distributors, and it was mentioned in this case originally and has now been stricken out, is that the one? A. Yes.

Q. Prior to September or October 1946 you had met Mr. Alprin, had you not? A. Yes.

Q. You had known him since 1936? A. 1937.

Q. Between 1937 and 1944, when you rendered your first tax opinion, do you recall the one I mean, April 1944—— A. Yes.

Q. —during that period you had gotten some business from Mr. Alprin? A. Yes.

Q. He had been recommended to your firm? A. Yes.

Q. And you got to know him pretty well by that time, hadn't you? A. Yes, sir.

Q. September or October 1946. A. Yes.

Q. How about Mr. Koerner prior to September or [8198] October 1946, had you met him? A. I don't think I had met him.

Q. You don't think you did? A. No, sir.

Q. Prior to the time that you went to Baltimore, you had two telephone conversations with Mr. Klein, one in the early part of 1945 and one in the early part of 1946; is that right? A. That's correct.

Q. The one in the early part of 1945, in substance, related to his request to retain your firm as tax consultants on a retainer basis of $500 a year? A. $500 for that year.

Q. For that year? A. Yes.

Q. 1945? A. Yes.

Q. And the second telephone conversation you had with him was in connection with the extension of that retainer to cover the year 1946? A. Yes, sir.

Q. Those were the only subjects that were discussed between you and Mr. Klein when you had those two telephone conversations with him that you recall? [8199] A. Yes, sir.

Q. So is it fair to say that up until September 1946 you had no conversations with Mr. Klein or with anybody in his employ that you recall regarding the Harwood situation, with the exception of the conversations you had with Mr. Alprin? A. I think it would be fair to say that.

Q. When you got down to Baltimore, came there at Mr. Klein's request, did you stay there all day or many days? A. No, I got there in the morning——

Q. Or part of the day? A. I came there early in the morning and left immediately after lunch.

Q. On that occasion Mr. Rosenberg was with Mr. Klein? A. Yes, sir.

Q. You know, of course, that Mr. Rosenberg is dead. A. Yes, I do.

Q. When you got there, Mr. Klein, in substance, explained to you that he wanted you to make a rough estimate of what his interest was in some of these corporations? [8200] A. Yes, sir.

Q. That is about right? A. Yes.

Q. And he furnished you with some rough work-sheets or a worksheet showing trial balances of various corporations? A. Yes, sir.

Q. And he asked you to prepare a rough estimate of what his share in those corporations would be? A. Yes, sir.

Q. You know, don't you, Mr. Haas, that the Tivoli Corporation was not included in that rough worksheet? A. I think I said it wasn't included.

Q. It was not included at any time in any trial balances, balance sheets, profit and loss statements or any other statements or data that were furnished to you at any time prior to the preparation of your consolidated statement? A. It has never been furnished to me, even to this date.

Q. Never been furnished to you? A. Never.

Q. You were told specifically by Mr. Klein that [8201] he was not selling out his interest in Tivoli, he was buying out the interests of his associates in Tivoli? A. That's right.

Q. He told you that either in September or in December of 1946? A. Correct.

Q. You knew, did you not, Mr. Haas, that Mr. Klein was selling out his interest in certain securities that he held to his Canadian associates in January, and specifically on January 20, 1947? A. I knew it before that date in January.

Q. You knew it before the date in January that he was about to sell those securities to his associates at some price? A. Yes, sir.

Q. You knew precisely and exactly what that price was, did you not? A. Yes, sir.

Q. And it was the price that you had found in your consolidated statement, was it not, leaving Tivoli out of consideration? A. Subject to adjustment.

Q. When you got to Baltimore was anything said [8202] in September 1946 about the Harwood business ending? A. Yes, sir.

Q. When I refer to the Harwood business, Mr. Haas, I refer not only to the sale of Harwood Whiskey but to the sale of Auld Malcolm, Jockey Cap, Highland Sandy, Dunbar and malt and bulk whiskey, you understand. A. I understand that to be the question.

Q. On that occasion in Baltimore Mr. Klein told you, did he not, that that entire business had ended October 1st, came to an end, all of it? A. If I was there in September, he might have said it was going to end or was about to end. I am not sure if I was there in September or October.

Q. In any event, if it was September, your recollection is that he told you it was shortly going to come to an end and if it were in October, he told you that it had ended, is that the best you can give us? A. I am making that assumption. I know I was told the business was either about

to come to an end or had come to an end, I am not sure which.

[8203] Q. And were you shown correspondence confirming that? A. No, sir.

Q. Did you know that a letter had been written to Williams & Company in August? A. No, sir.

Q. Ending that business on the 1st of October? A. No, sir, I did not.

Q. Did you know that the business had been conducted on an at-will basis from midnight of June 30th of 1946 on until October 1st, 1946? A. No, sir, I didn't know that.

Q. Did Mr. Alprin ever tell you that? A. No, sir, he never did.

Q. Did Mr. Roer ever tell you that? A. No, sir, he never did.

Q. Did Mr. Klein ever tell you that? A. No, sir.

Q. You knew nothing about that at all? A. No, sir.

Q. But you did learn, whenever you were in Baltimore, that either the business had ended or was about to end? A. Yes, sir.

Q. And that was the reason why Mr. Klein wanted to estimate how much he had in those companies? A. That's what he said to me.

[8204] Q. Now, when you saw that sheet, this columnar sheet that had the names of a number of corporations on it, with their trial balances, did you recall or do you recall now that that included the names of Waldorf & Company? A. I don't recall the names on that sheet.

Q. Regan Potter? A. No, I do not recall that.

Q. You don't recall the names of any of the companies that were on that sheet? A. Not the one I got in September.

Q. But you know that there were a number of companies listed on that sheet? A. Yes, sir.

Q. And you roughly computed what his share would be? A. Yes, sir.

Q. Can you tell us now whether that rough computation was approximately the same as the final computation that you arrived at when you prepared the consolidated statement? A. Yes, it was.

Q. It was? A. Yes, it was.

Q. Do you remember what it was in the rough calculation you made? A. No, no, I don't.

[8205] Q. But it was substantially the same as the final result? A. Yes, sir.

Q. With slight variations? A. Yes, sir.

Q. And you told that to Mr. Klein then? A. I told——

Q. The amount? A. I told him the amount.

Q. After that conference with Mr. Klein in September or October '46, the next thing that happened was the preparation of the consolidated statement as of December 30, 1946, December 31st? A. Yes, sir.

Q. Now, how did that come about? Did Mr. Klein call you up, come to your office? A. No, he called me up to come down to Baltimore.

Q. And you went down to Baltimore? A. Yes, I did.

Q. And there you had a conversation with him? A. Yes.

Q. About preparing a consolidated balance sheet? A. Well, he didn't call it consolidated balance sheet. He called it a statement. I called it a consolidated balance sheet.

Q. We call it a consolidated statement. A. Yes, sir.

[8206] Q. The document that is in evidence here that I referred to as Exhibit 371, is it—371? A. Yes.

Q. And at that time did he give you Roer's papers? A. Roer's papers?

Q. Not Roer's papers, Rokoff's papers. A. The trial balances, you mean?

Q. Yes. A. Yes, he did.

Q. That was in Baltimore that you received the—— A. Yes, sir.

Q. And did you bring them back to New York and work from them in connection with the preparation of the consolidated statement? A. Yes, I did.

Q. And then you prepared it as of December 31, 1946, in the early part of January, 1947, did you not? A. Yes, sir.

Q. Do you recall the names of the companies that were in that consolidated statement? A. I wouldn't be able to repeat them from memory, no.

Q. But do you recall that they were the same corporations that were covered by what you did in Baltimore in September and October of 1946; they were [8207] the same companies, weren't they? A. I don't want to say they were the same because I didn't pay too much attention in September or October to the names on top of the work-sheet. I was just interested in the figures at that time.

Q. Well now, that I call to your attention the fact that your rough estimate was approximately the same as your final consolidated statement, doesn't that refresh your recollection to the extent that you can now tell us that the same companies were included in the consolidated statement that had been included in the rough sheet that you had received in Baltimore in September and October of that year? A. I always assumed that they were the same, but I don't recollect particularly.

Q. Well, you can say that you don't know of any dif-

ferent corporation being included in the consolidated statement that was not in the former one? A. No, sir.

Q. Or any one that was in the former one that was excluded from the later one; you don't have any recollection of that? A. That I can't say.

Q. Were you advised of the closing of the deal [8208] on January 20, 1947? A. The sale of his stock?

Q. Yes. A. Yes, sir.

Q. And did Mr. Klein in that connection advise you that he had sold out on the basis of your consolidated statement and that he had purchased the Tivoli stock of his associates for $375,000? A. He didn't say that he had sold out on the basis of my consolidated statement. He just said that he had sold out and told me how much he had gotten.

Q. He told you how much he had gotten? A. Yes.

Q. And did he tell you that he had paid for Tivoli $375,000 to purchase that company? A. Yes, sir.

Q. The outstanding interest of his three associates? A. Yes, he did.

Q. And he told you that about that time, January 20, 1947? A. I think so, yes.

Q. Now, Mr. Haas, so far as La Ribera is concerned, the first time that name came into existence, so far as you know, was when you had a conversation with Mr. Klein in February of 1947? A. No, when I had a conversation with Mr. Roer in [8209] February of 1947.

Q. You didn't have any conversation with Mr. Klein in February, 1947 about La Ribera? A. Yes, but that came afterward. You asked me the first time.

Q. Then the first one was with Mr. Roer? A. Yes.

Q. Have you told us about that conversation? A. Yes, I did. I said Mr. Roer came to my office and gave me the papers.

Q. Well, prior to the time that Mr. Roer came to your office and gave you the papers, didn't you have a talk with Mr. Klein in which he indicated to you that Mr. Roer had a corporation, that he wanted Mr. Roer to give you that corporation? A. Yes, but he didn't mention it by name.

Q. But he didn't mention the name? A. No. He may not have known the name at that time.

Q. I think you are quite right, Mr. Haas. I will reframe my question.

The first time you had any conversation with Mr. Klein or anybody else about any Cuban corporation or any Panamanian corporation was with Mr. Klein in February [8210] of 1947, followed shortly by a conversation you had with Mr. Roer when he brought the envelope, is that right? A. I would like to have that question re-read.

Mr. Kiendl: Surely.

(Question read.)

A. I don't think you mean to ask me that. I heard about a Cuban corporation in April, 1944.

Q. Well, I will further amend my question so we will be on common ground if we can get there, Mr. Haas.

The first time you knew about any corporation in which you were to take an interest, Cuban or Panamanian, was in February, 1947? A. Yes, sir.

Q. And the first time you heard about that was when Mr. Klein mentioned it to you? A. Yes, sir.

Q. And did he mention it to you in Baltimore or in your office? A. In my office.

Q. And will you tell us once again just what conversation you had with Mr. Klein on that subject, giving us the words if you can give them, and if you can't give the words,

giving us the substance. A. I can't give the words. The substance——

[8211] Q. Then will you give the substance. A. The substance was that Mr. Klein was going to go into business, that he was going to include my partners and I in that business because he wanted to see us make some money; that he was going to have Mr. Roer, who was one of his employees, transfer a Cuban corporation to us, and that he would lend that Cuban corporation such capital to enable it to function.

Q. Anything else said that you recall? A. Not that I recall.

Q. Anything that you said that you recall? A. I was very grateful.

Q. You said you were very grateful? A. Yes.

Q. Anything else said that you recall? A. I can't recall anything else.

Q. So that now is it fair to say, Mr. Haas, that you had a full opportunity to tell us all that you recall about that first conversation of your going into any business, Cuban corporation or a Panamanian corporation? A. Yes, sir.

Q. When Mr. Kein said to you that he wanted to give you an opportunity to go into business, did you ask him what kind of business it was? [8212] A. Well, he had been talking before that, that he was going into——

Q. Did you ask him, sir, what kind of business? A. I knew what kind of business.

Q. I didn't ask you what you knew. I said did you ask him. A. No, sir, I did not.

Q. And when he mentioned financing the business, loaning the business money, did you ask him how much he was going to loan it? A. No, sir.

Q. All that you said to him as a result of that offer on his part to set up this business for you and your partners was that you were grateful? A. Oh, I may have said many other things, but you asked me what do I recall.

[8213] Q. I know what you may have, Mr. Haas, but I want to know what you did.

Mr. Bender: Your Honor, may the witness have an opportunity to answer the question of Mr. Kiendl?

The Court: He answered it. Overruled.

Q. Did you say anything else that you remember? A. That I remember, no. The conversation just didn't end that way.

Q. I want to be sure that you exhausted your recollection of what was said on that occasion, Mr. Haas. Now, have I or have I not exhausted your recollection? A. I think you have.

Q. Did you at that time, Mr. Haas, make a memorandum of what transpired? A. I don't think so. I have no recollection.

Q. You have looked carefully through your files before you testified, here, have you not? A. Yes.

Q. For every scrap of paper that you have bearing on this situation, is that right? A. Yes, sir.

Q. And you didn't find any memorandum of this [8214] original conversation with Mr. Klein on the subject that developed into this La Ribera situation? A. No, sir.

Q. On that date in February of 1947 had you been paid in full by Mr. Klein for all services that you had

rendered to any of his corporations with the exception, perhaps, of a current month or something of that kind? A. Cambridge was the only corporation for which I was doing any work, that he was interested in. I had been paid in full as far as Cambridge was concerned.

Q. You had been paid in full for the preparation and rendering of the opinions that you had rendered? A. Yes, sir.

Q. You had been paid in full for the retainers that you had agreed on over the telephone for 1945 and for 1946? A. Yes, sir.

Q. So on that occasion there was nothing due you that you now recall or due to any member of your firm? A. Oh, there might have been a slight amount for the——

[8215] Q. A negligible amount? A. —for the time that we had devoted to him prior to February, the month of January, for instance.

Q. The month of January. It would be a negligible amount, wouldn't it? A. Yes.

Q. By the way, did you continue the retainer of $500 a year for the year 1947? A. No, sir.

Q. You didn't. Now, had you ever been in the whiskey business prior to 1947? A. No, sir.

Q. Had Mr. Schlesinger? A. No, sir.

Q. Had Mr. Mayers? A. No, sir.

Q. Had any of you been in any other business than in the accountant tax business that you had during the time that that firm was in existence? A. Oh, we had investments in other business, yes.

Q. You had investments in other business. You mean you bought stock and things of that kind in other business?

A. I don't mean necessarily stock exchange [8216] companies. In private companies.

Q. You had an investment in private companies, but you didn't do any other business, did you? A. No, sir.

Q. Did you expect to actively engage in the whiskey business? A. No, sir.

Q. Do I understand, Mr. Haas, that without being indebted to you or your partners at all, Mr. Klein came to you, said, "I want you men to make some money; I am going to set you up in business; I am going to provide the capital; I am going to provide the business; I am going to make the earnings and give it to you"? A. That is exactly what happened.

Q. And you said you are grateful, is that right? A. Yes, sir.

Q. Nothing more? A. I said I may have said much more, but I don't recall particularly.

Q. Well, so far as you recall you cannot tell us a single thing that was said to Mr. Klein about that offer of his except that you were grateful? A. That's right.

Q. You didn't protest that there was no reason [8217] under the sun why he should do this for you and your partners? A. No.

Q. And did you report this to your partners? A. Oh, yes, I did.

Q. And did they make any memorandum of it of any kind? A. Not that I know of.

Q. Well, after that conversation Mr. Roer called you up and came in to see you, is that what happened? A. Yes.

Q. I mean Mr.—yes, Mr. Roer. A. Yes.

Q. And that was in February of 1947? A. Yes.

Q. And he brought in an envelope to your office? A. Yes.

Q. And he said, "Here are the papers of one of my corporations. I have just picked it out by random. The name of it is La Ribera." Is that right? A. To that effect.

Q. Did he say that Mr. Klein had sent him? A. Mr. Klein had told him to do so.

Q. And he gave you the envelope and you had some discussion with him about the corporate procedure [8218] that would be necessary to transfer that corporation, its officers, directors and stockholders from Roer to you and your partners? A. Yes.

Q. Is that right? A. Yes.

Q. Now, do you have the contents of that envelope? A. Do I have them?

Q. Yes. A. I haven't got them. My attorney may have them.

Q. Do you know whether your attorney has them? A. I don't know. I think I gave him all my papers.

Q. Well, didn't you look at the papers that you gave him to see whether they contained these papers that Mr. Roer delivered to you in February of 1947? A. I gave him a stack of papers about a foot high.

Q. I didn't ask you that, Mr. Haas. A. I know you didn't.

Q. I asked you if you didn't remember that you gave to him the papers that Mr. Roer gave to you in February of 1947? [8219] A. If I didn't give them to him, I still have them in my office.

Q. The answer to my question is you don't remember whether you gave them to him or not. A. I don't remember whether I gave them to him or whether I still got them, myself.

Q. Did you look at them? A. Sure.

Q. What papers were contained in that envelope? A. There was a checkbook.

Q. A checkbook? A. Yes.

Q. A checkbook on some bank in the City of New York or elsewhere? A. A checkbook on some bank in the City of Havana, contained—just had a few hundred dollars in it. There was a bank book showing deposits in that checkbook. There was a certificate of incorporation or a certified copy of a certificate of incorporation. And I think there was one certificate of stock. I am not sure, there was one or four. I am not sure how many certificates of stock there were.

Q. Wasn't there a stockbook or a pad of stock sheets? A. No, sir.

Q. Stock certificate sheets? [8219] A. No. They were loose.

Q. There was just one or perhaps more separate stock certificates? A. Yes.

Q. You don't remember how many? A. No, I don't.

Q. And they were in the names of certain individuals connected with Mr. Roer, or don't you remember? A. I think they were in the names of Mr. Roer and his family, his wife and son.

Q. And were they all endorsed in blank? A. I had them endorsed in blank.

Q. You had them endorsed in blank? A. Yes.

Q. So you had a bank checkbook, and you had a certificate of incorporation, and you had some one or more stock certificates, is that right? A. To the best of my recollection, yes.

Q. Did you have anything else in that envelope that you recall? A. I don't recall at the moment.

Q. And when Mr. Roer delivered those documents to you, he wanted you to pay him $800 for the transfer of the corporation from his interests to your interests, [8221] is that right? A. Yes.

Q. And he wanted you to pay him in cash, that's right? A. Yes.

Q. And you did pay him in cash? A. Yes.

Q. Did you draw the $800 out of the bank or did you have it there in your office, available? A. I am not sure.

Q. And did you get one-third of the $800 from each one of your two partners? A. Yes.

Q. That day or shortly thereafter? A. Oh, we had many accounts between us and we settled up at the end of a month or at the end of two months and that would be included in any settlement.

Q. And did you keep a record of the payment of the $800 to Mr. Roer? A. What kind of record?

Q. Any kind of record? A. No kind of record, no, sir.

Q. You are sure of that? A. Yes.

Q. Did you keep any record of the payment from your partners to you of their one-third share [8222] of the $800? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. So there isn't written document of any kind anywhere that evidences the receipt by you of these documents or the payment by you to Mr. Roer of the $800? A. The evidence of the receipt by me is the fact that I have them.

Q. That you have them. A. Yes.

Q. But there is no documentary evidence anywhere of

the payment by you to Mr. Roer of $800 for this corporation? A. No, sir.

Q. Or the payment——

The Court: I am going to interrupt now for a recess of about ten minutes.

(Short recess.)

Q. Now, Mr. Haas, after you received the contents of the envelope did you cause or did anyone in your firm cause to be issued new stock certificates? A. No, sir.

[8223] Q. There were no new stock certificates ever issued, were there? A. No, sir.

Q. You didn't even obtain a blank form of stock certificate of La Ribera, did you? A. No, sir, just the ones that were endorsed in blank.

Q. You just kept those that were endorsed in blank and you never transferred them to anyone, did you? A. No, sir.

Q. There is no endorsement on the back of any of these certificates so far as you know transferring any certificate that was in the hands of any member of the Roer family into the names of you or any of your partners or any of your family? A. No, the endorsements were in blank.

Q. Did you hold meetings of the La Ribera Corporation? A. No, sir.

Q. Never any? A. No, sir.

Q. Who were the officers of that corporation after you acquired this interest for $800? A. I know I was president.

[8224] Q. Yes. A. I don't recall what other officers we used.

Q. Didn't you see documents introduced in evidence in this courtroom that indicated who the other officers were?

A. Yes, I saw them. I don't remember them right at this moment.

Mr. Kiendl: May I have Exhibit 337, please.

Q. While they are looking for that exhibit, Mr. Haas, don't you recall that neither Mr. Schlesinger nor Mr. Mayers were ever officers of La Ribera? A. Yes, I recall that.

Q. Were they ever elected directors of La Ribera? A. That I don't remember.

Q. Who were the directors of La Ribera? You never had a meeting, did you? A. No, sir.

Q. You never elected directors, you never elected officers, so far as you know? A. We had no formal meeting.

Q. Did you ever have any meeting, I say. A. We had no formal meeting.

Q. Will you answer my question, please. A. I answered your question. [8225]

Q. Did you have any meeting? A. I answered your question.

Mr. Kiendl: I ask the Court to direct the witness to answer if they had a meeting of any kind.

The Court: Answer the question, please.

A. I think we had an informal meeting.

Q. When you say you think, you mean you are rather hazy about it? A. Yes. I know we filed a certificate with the bank which indicated that a meeting had been held, and that was the informal meeting that I am thinking about.

Q. That certificate with the bank refers to a meeting on March 19, 1947, does it not? A. If you will show me the exhibit.

Q. Without looking at the exhibit, do you recall having a board of directors' meeting at any time anywhere? A. Not a formal meeting, no.

Q. Do you remember having an informal meeting of the board of directors of La Ribera any time, anywhere? A. I certified to the fact that there was.

Q. I did not ask you what you certified to, I [8226] asked you if you remembered. A. Yes, an informal meeting.

Q. Where was that held? A. In Toronto.

Q. At the Royal York Hotel in Toronto? A. Yes.

Q. Who was present? A. My wife and I.

Q. Was your wife a director? A. I don't know, I don't remember.

Q. It was just you and your wife who were there at the Royal York Hotel in Toronto on that date? A. I think so.

Q. Mr. Schlesinger was not there and Mr. Mayers or anybody representing him? A. No, sir, I was representing them.

Q. Outside of you and your wife? A. Yes.

Q. Was any other member of your family present? A. No, sir.

Q. Isn't it a fact, Mr. Haas, what happened was that this certificate was filed with the bank, and it represented a meeting that was never called at all and never held? [8227] A. Any more than any other closely held corporations have formal meetings. The lawyer makes up the certificate and that is the meeting.

Q. The certificate that you referred to, can you identify that as the certificate contained in the bank records of the Royal Bank of Canada, Toronto, Ontario, Government's Exhibit 337, that I now show you (handing to witness)? A. What was your question?

Q. Can you identify that as the certificate that you referred to? A. Yes, this is the copy of the certificate.

Q. And that says that "it is a true and correct copy of a resolution duly adopted by the board of directors of said corporation at a meeting duly called and held at the Royal York Hotel, Toronto, Dominion of Canada, on March 19, 1947, at which a quorum was present and all legal requirements were strictly observed." You agree that that certificate contains that statement that I just read to you, don't you? A. I am assuming you are reading it correctly.

Q. Maybe you better read it so you will be sure it is correct. A. Can't I accept your reading?

[8228] Q. If you will accept it. A. I accept it.

Q. Do you have any record of any board of directors' minutes of any meetings of the board of directors ever held after the formation of this corporation? A. No, sir.

Q. Have you looked at that portion of this exhibit which shows who the officers and directors of the company were? A. Yes, sir.

Q. You now know, do you not, that you were the president, Estelle Haas was the treasurer, Adrian L. Haas was the secretary, Meyer M. Davis was the assistant secretary, and that the directors were Maurice A. Haas, Estelle Haas and Adrian L. Haas? A. Yes.

Q. Estelle Haas is your wife? A. Yes.

Q. And who is Adrian L. Haas? A. My son.

Q. Meyer M. Davis is your cousin? A. Yes.

Q. After your conversation—withdrawn. You made some mention in connection with your off-the-[8229]-cuff opinion about the question as to whether or not Agencias Destiladores was a resident foreign corporation, and, consequently taxable as such; do you recall that? A. I didn't say it would be taxable as such. I said I wanted to look into it whether it would be taxable as such.

Q. You wanted to look into it to see whether or not if it were a resident foreign corporation any part of its income would be taxable in the United States, does that put it accurately? A. Yes.

Q. Didn't you know that under the law taxes on foreign corporations— withdrawn.

Mr. Haas, didn't you know that under the law on taxes on foreign corporations that there were provisions that in case of a foreign corporation resident or non-resident, gross income includes only the gross income from sources within the United States? A. Yes.

Q. And that would apply to a resident foreign corporation, would it not? A. Yes.

Q. As well as to a non-resident foreign corporation? [8230] A. That is right.

Q. However, after your conversation with Mr. Roer, the one where the envelope was given to you containing the documents that you have told us about, you did go down to Baltimore and saw Mr. Klein, did you not? A. Yes, I did.

Maurice A. Haas—By Defendant—Cross

Q. How close to the time when Mr. Roer was in your office did that conversation take place? A. Shortly thereafter.

Q. A few days or a week? A. I don't remember exactly.

Q. However, it wasn't months or years after, was it? A. No, it was in the same month.

Q. Was Mr. Rosenberg with Mr. Klein then? A. Yes, he was there.

Q. Did you go down at Mr. Klein's request? A. Yes, I did.

Q. Did you tell him what had transpired with Mr. Roer? A. During the course of our conversation, yes.

Q. Did you tell him that you had purchased this company of Mr. Roer's and paid $800 to Mr. Roer in [8231] cash for it? A. I don't know whether I gave him all the details.

Q. Did you give him that detail that you purchased the corporation for $800 in cash?

Mr. Bender: I would like to object to Mr. Kiendl interposing one question and in the middle of the answer interposing another question. I think the witness should be given the courtesy of answering one question at a time.

The Court: Mr. Haas, have you been interrupted in any of your answers?

The Witness: Not too much, sir.

Q. You don't think too much? A. You interrupted me occasionally.

Q. If I interrupt you, will you stop me, Mr. Haas? A. I thought that was my attorney's duty.

Q. I will give you the privilege if at any time you think I am interrupting you, to stop me. Will you? A. Yes, sir.

Q. When you went down to Baltimore, did you tell Mr. Klein that you had paid Mr. Roer $800 in cash for that La Ribera Corporation set of documents that you [8232] received? A. No, sir, I don't think I did.

Q. Did you tell that to Mr. Alprin? A. No.

Q. Did you tell it to anybody other than your partners? A. Mr. Roer knew it.

Q. You told Mr. Roer because he was the one that got the $800? A. That is right.

Q. But did you tell what had happened between you and Mr. Roer to anybody? A. I told Mr. Klein that I had acquired the corporation from Mr. Roer.

Q. But you did not tell him you spent $800 acquiring it or that it was $800 in cash? A. No, I didn't think it was necessary.

Q. When you were there with Mr. Klein you told him that you had acquired the corporation, and he said in substance to you "Now, I will loan you $35,000, loan the corporation $35,000, that will be enough capital, all you need by way of capital," something to that effect? A. Something to that effect, yes.

[8233] Q. Can you describe it any better than I did as to what was said? A. No, I think you did very well.

Q. What did you say about that, anything at all? A. I thanked him again.

Q. Anything else that you recall? A. We had a whole morning's conversation. I don't recall the conversation particularly. These other things——

Q. I am asking you if there is anything else that you recall, is there or is there not anything else that you recall except your thanking him for his willingness to loan your corporation $35,000? A. He handed me a check. That is something else I recall.

Q. Is there anything you recall that you said other than "Thank you"? A. I don't recall.

Q. Didn't you inquire, "What do we need $35,000 for?" A. No, I assumed he knew what we needed it for.

Q. And you did not know what you needed it for, you had not the faintest idea what you would need $35,000 for? [8234] A. No, sir.

Q. And you never made any inquiry as to why the corporation which you had purchased was going to borrow $35,000 from Mr. Klein or some company that he was associated with? A. I certainly was not going to cross him about it, no.

Q. You did not ask him a single question about it? You just said "Thank you"? A. More or less.

Q. More or less. Did you enter on your partnership books first the $800 that you had paid to Mr. Roer? A. This was not a partnership asset.

Q. It was not a partnership asset? A. No, it was an asset of the individuals, Mr. Schlesinger, Mr. Mayers and myself.

Q. It had nothing to do with your partnership? A. It had nothing to do with our accounting business.

Q. Separate and apart and independent of your partnership entirely? A. It was independent and separate from our accounting business. The only books we kept——

Q. What did—— [8235] A. May I continue?

Q. Certainly. A. The only books we kept were books of our accounting business. We did not keep personal books.

Q. And the books that you kept of your accounting business did not include any reference to any part of this transaction regarding La Ribera? A. No, sir.

Q. There is no entry of any kind in any of your partnership records regarding this transaction of La Ribera? A. No, sir.

Q. And is there any entry in your personal books about it? A. I don't have any personal books.

Q. Is there any entry, as far as you know, in any personal books of Mr. Schlesinger or Mr. Mayers about it? A. I don't think they keep personal books either.

Q. When you say you don't think so, that is the information you have obtained so far as your recollection goes from them? A. I am answering your question. You asked me so far as I know.

[8236] Q. I say you think they did not keep personal books, and you base that on information you have obtained from them? A. Yes, sure. In the course of dealing with them over a period of thirty-odd years. I know they did not keep personal books.

Q. So far as you can testify, according to your recollection, neither you nor Mr. Schlesinger nor Mr. Mayers nor the firm in the name of Haas, Schlesinger & Mayers, ever made any entries, anywhere, in any firm books or any personal books regarding this transaction, is that right, with respect to La Ribera? A. Not the purchase, no.

[8237] Q. Anything else, was anything else entered in the books of the La Ribera? A. At the time we liquidated La Ribera we reported that income on our income tax returns, and that is part of our personal records.

Q. It is your income tax return in 1949 or thereafter? A. Yes.

Q. But there is nothing anywhere in any of your personal records or your firm records regarding this transaction with Mr. Klein in 1947 in Baltimore? A. No, sir.

Q. What else was said or done in the conference with Mr. Klein in Baltimore in February 1947? A. Mr. Klein told me to take the check to Toronto, Canada, deposit it there and leave it there until he was ready to start with the business.

Q. Are you very sure of that, he told you to take it to Toronto? A. I would not testify to it if I weren't sure of it.

Q. I want to be certain you haven't any doubts in your mind. Mr. Klein told you to take it to Toronto and deposit it there? [8238] A. If I have doubts, I will mention it. I had no doubts.

Q. What did you say about that, do you recall? A. I was following and obeying his instructions.

Q. I did not ask you what you were following. I asked you what you recalled.

Do you recall saying anything to him about that? A. I said I would do so.

Q. So he said, "Take this check, deposit it in Toronto, Canada"—did he mention the Royal Bank of Canada? A. I think he did, yes.

Q. You said, "I will do so"? A. Yes.

Q. That is all you remember on that subject? A. Yes.

Q. In your conversation with Mr. Klein? A. Yes.

Q. You did not tell him, did you, that there was an accountant in Toronto by the name of Davis who was related to you? A. No.

Q. There was an accountant in Toronto by the name of Davis who was related to you? [8239] A. Yes, a cousin of mine.

Q. Did you tell Mr. Klein that you had such a cousin in Toronto? A. No, sir.

Q. Did you ever mention that? A. No, sir.

Q. It was this Mr. Davis that you went to when you got to Toronto, was it not, at the suggestion of the Bank, which wanted some resident officer of La Kibera in Toronto? A. I went to Davis first, before I went to the bank.

Q. You went right to your cousin? A. I didn't go right to him, I called him on the telephone when I got to Toronto.

Q. As a matter of fact, it was your cousin, Mr. Davis, that took you to the Royal Bank of Canada, Toronto, and introduced you to the manager? A. That is why I called him, to ask him if he knew the manager of the bank to introduce me to him.

Q. Did Mr. Klein say anything about the manager of the bank being known to him when you talked to him in Baltimore? A. I don't believe so.

[8240] Q. Did he say why you should go to Toronto rather than to Montreal? A. No.

Q. Did you inquire? A. No.

Q. Did you ask him in any way, directly or indirectly, why it was that you were to go to Toronto and deposit this check? A. I assumed it was the nearest spot in Canada that he was doing business in.

Q. You mean that, you assumed it was the nearest spot in Canada and he was doing business there? A. The nearest spot in Canada that he was doing business in.

Q. Did you know that he was doing business in Toronto? A. No.

Q. Did you hear his testimony on the witness stand in this courtroom? A. Yes, sure.

Q. Did you ever ask him whether he was doing business in Toronto? A. No, I never did.

Q. Did you ever ask him to introduce you to any bank in Toronto? A. No, sir, I never did.

Q. Did you ever ask him if he knew any people [8241] in Toronto, lawyers or accountants or others, to whom you could go to deposit this check? A. No, sir.

Q. You not only went to Mr. Davis to introduce you to the manager of the bank in Toronto, but you made him the assistant secretary of your corporation, didn't you? A. Yes, I did.

Q. How did you do that? A. The manager of the bank told me it was a Canadian banking rule that a resident Canadian had to be an officer of a foreign corporation to receive communications.

Q. At that same meeting when you and your wife were there in this hotel, the Royal York Hotel, you had an informal meeting at which you elected Mr. Meyer M. Davis, the assistant secretary of La Ribera, is that right? A. That's right.

Q. You went to the bank and deposited the check in the bank that same day, March 19, 1947, did you not? A. I think so, but let me look.

Q. I show you the transcript, the bank record of the account, and it shows here a deposit on March 19th [8242] of $35,000. A. That's right.

Q. You never deposited $35,000 in that bank at any other time, did you? A. No, sir.

Q. It was only the one check? A. That's right.

Q. You deposited it the same day when you had this meeting, when you elected Mr. Davis as the assistant secretary? A. That's right. That is what I went up for.

Q. Did you advise the bank that you and two others were the stockholders of La Ribera? A. No, they were not interested in that.

Q. They didn't ask and you didn't say anything about it? A. That's right.

Q. As a matter of fact, the other stockholders were your wife and your son, were they not? A. The other stockholders were Mr. Schlesinger and Mr. Mayers.

Q. That money continued there from March 19th for a few weeks before it was frozen? A. From March 19th until May of ——

Q. May of 1947? A. Yes.

[8243] Q. When was it unfrozen? In 1949? A. I think it was in January 1949.

Q. When it was frozen, did you personally take any steps to unfreeze it? A. The only steps I took were to tell Mr. Klein about it.

Q. You told Mr. Klein that the funds were frozen in the Toronto Bank? A. Yes.

Q. And he told you that he was taking steps to unfreeze all the accounts? A. He told me that his account and the Hannes account were also frozen and he was taking steps to unfreeze them all.

Q. To unfreeze them all? A. Yes.

Q. So you relied on him to unfreeze the accounts? A. Sure, I did.

Q. Did you say anything to him on that occasion about the fact that you had borrowed the money for your corporation from his corporation and there was no reason whatever why this should be frozen? Did you say anything like that to him? A. Why should I tell him that there is no reason?

[8244] Q. I did not ask you why, I asked you if you did. A. I would like you to repeat your question.

Mr. Kiendl: Read the question, please.

(Question read.)

A. No, of course not.

Q. When you were in Baltimore Mr. Klein gave you this check, he told you, did he not, so you have testified here, that you were to hold it and not use it until he started in business? A. Yes, that is what the loan was given to us for.

Q. Do you know of any reason why he should give you $35,000 by way of a loan or otherwise prior to the time that he started in business?

Mr. Bender: I am going to object to this on the ground that Mr. Kiendl has already gone into this thing and the witness has already answered it, and it is just being a repetition of the same thing.

The Court: Overruled.

(The question was read.)

A. I don't know about the timing, unless he expected to start in business soon thereafter.

Q. Did he ever tell you that he expected to start in business soon thereafter? [8245] A. When he asked me if he could use my space in the Chanin Building, I did not expect that he would stay there for four or five years. I thought he would go into business quite soon thereafter, and I was always on the assumption that it would be some time in 1947. It did not seem to me out of the way at all that he made the loan in February, 1947.

Mr. Kiendl: May I move to strike out the entire answer as not responsive.

The Court: Granted.

Read the question back to the witness, please.

(Question read.)

A. I don't know whether he said so in so many words, I don't recall.

Q. Mr. Haas, when you got this check and you brought it back to New York, did you set up books for the La Ribera Company to reflect that loan? A. No, I did not think it was necessary at the time.

Q. You did not think it was necessary? A. No.

Q. Did you ever think it was necessary after that [8246] time? A. No.

Q. Did you ever set it up at any time in any books of La Ribera? A. No, I did not think it was necessary.

Q. Isn't it a fact that what actually happened was that you told Mr. Klein that you wanted to engage in some kind of business through a Cuban or Panamanian corporation and you wanted him to loan you money so that when you got an opportunity you could avail yourself of it? A. That is absolutely not true.

Q. That is not true? A. No, sir.

Q. Can you tell us why it was with your experience in tax matters you did not set up any books reflecting this particular loan? A. Because there was just this one entry, the loan, that is all. We did not need any books at that time. We were going to set books up as soon as it went into business.

Q. Did you ever set up any books for La Ribera? A. I said I never did.

Q. No books of any kind, character or description? A. No, sir.

[8247] Q. There isn't any work sheets or any documents of any kind that you have regarding La Ribera, except what you obtained from Mr. Roer, is that right? A. I have the bank statement

Q. You have the bank statement? A. Yes.

Q. Anything else? A. That is all there is in La Ribera, besides the three checks that were issued.

Q. The reason that you did not set up any books regarding transactions in La Ribera was because you thought it was unnecessary? A. That's right.

Q. Did anything else transpire in Baltimore that you recall that I haven't asked you about? A. What period are you talking about?

Q. The one conversation that you had with Mr. Klein in February 1947, when you went down there to advise him that you had received the papers that you had acquired the Roer corporation, La Ribera? A. I think you have covered it.

[8248] Q. Now, you prepared, did you not, Mr. Klein's declaration of his estimated return for the year 1947? A. Yes, I did.

Mr. Kiendl: May I have that, whatever exhibit number it is?

Q. And you also prepared his final 1947 return in large part, did you not? A. In 1948, yes.

Q. In 1948. Of course you file your 1947 return by March 15th of the following year, the final return, don't you? A. Yes, unless you get an extension of time.

Q. And there was an extension of time that you procured in this case for Mr. Klein extending it to May 17, 1948? A. Correct.

Q. And the return was filed on May 17, 1948; the return in evidence here shows that, does it not? A. Yes, it does.

Q. And that return was prepared by you? A. Yes, it was.

Q. And this declaration of the estimated tax was also prepared by you, Government's Exhibit 355, is that right? A. That's right.

Q. Now, can you tell us whether the amount shown [8249] on that declaration of the estimated tax, $1,203,500, was approximately the one-quarter of the total profit that Mr. Klein made in his deal with the three Canadian associates in January, January 20, 1947? A. The $1,200,000 was.

Q. Yes. And does that amount on this declaration of estimated tax roughly approximate the figures that you gave to Mr. Klein very roughly on the first occasion in October or September of 1946? A. Yes, it does.

Q. It does.

Mr. Kiendl: Now may I have the income tax returns?

The Court: Excuse me a minute. It approximates the tax on it, doesn't it?

Mr. Kiendl: The tax on it, I meant to say, your Honor. I am sorry.

The Court: It doesn't approximate the figure that you gave him, even roughly, the figure that you gave him in September?

The Witness: I thought Mr. Kiendl said it approximated one-quarter of the figure.

The Court: No, he didn't. As long as we understand it, then it is cleared up.

[8250] Q. This is the 1947 return, is it not, Government's Exhibit 358? A. Yes, sir.

Mr. Bender: I have another photostat with large figures, Mr. Kiendl, if you think the witness will be better able to follow it.

Mr. Kiendl: I will be glad to give it to him, Mr. Bender, if you will.

Mr. Bender: All right.

The Witness: Thank you.

Q. Now, attached to that return is a rider, "Hyman H. Klein, 1947. The Collector has levied on all of the taxpayer's funds and for that reason he is unable to pay the balance due as shown by this tax return."

Do you find that? A. Yes, I do.

Q. Was that prepared in your office, by you? A. Yes, it was.

Q. And it was attached to and made a part of that tax return with your approval and on your recommendation, was it not? A. Yes, it was.

The Court: May I interrupt a moment?

Will you go back? When Mr. Kiendl handed Mr. Haas the exhibit, tell me the exhibit number that he mentioned, if he did mention one.

[8251] (Record read.)

The Court: It is 356, if you are referring to the 1947 return of Hyman H. Klein.

Mr. Kiendl: Quite correct. You are quite right, your Honor. I am sorry.

The Court: So that we don't get wrong exhibit numbers in the record. It is hard enough to keep the right ones.

Mr. Kiendl: I am sorry, your Honor.

The Court: You will just have to suffer my interruptions so long as you make the mistakes.

Mr. Kiendl: Always delighted to be interrupted by your Honor.

By Mr. Kiendl:

Q. Now, Mr. Haas, on the very first page of that income tax return, Government's Exhibit 356, there is typed in at the foot of it, above the signatures of yourself and Mr. Klein, the words, "And in accordance with advice and instructions from counsel." You see that? A. Yes, I do.

Q. And that was typed in by your office, with your approval and your knowledge, was it not? A. Yes, it was.

Q. And on your recommendation? [8252] A. On the recommendation of either Mr. McGuigan or Mr. Kilcullen.

Q. And with your complete approval? A. Yes, sir.

Q. And that was on there before you signed your name, Maurice A. Haas, on the 17th day of May, 1948, is that right? A. I think so.

Q. And you certified, did you not, that you had prepared the return by your signature in the lower lefthand corner of it? A. I certified in this declaration—even though I don't make any denial that I prepared the return—I certified that the return has been examined by me.

Q. I didn't ask you that, Mr. Haas. You certified that you had prepared the return, did you not? A. No.

Q. Well, do you see the words under your signature? Your signature is there, isn't it, Maurice A. Haas, and the date 5 17 48? A. Yes, I see that.

Q. And the 5 17 48 is there in your handwriting? A. Yes, it is.

Q. Now, directly underneath that line, "Signature of person other than taxpayer or agent preparing return." [8253] A. That is not a certification. That is merely a designation of who the man is that signed the return.

Q. So that when you signed that, you signed that as the person who prepared the return, without certifying that you prepared it? A. Correct.

Q. Is that what you want us to understand? But you did prepare it in fact, didn't you? A. No question about that. Sure I prepared it.

Q. Now, you find in that return a rider to the 1947 excess tax return about Tivoli Trading Company, do you not? A. Yes, sir.

Q. And that was inserted in the return with your knowledge and approval, was it not? A. Yes, sir.

Q. That rider was prepared by you, was it not, in your office? A. It was not.

Q. Where was it prepared? A. It was prepared by McGuigan—well, the actual piece of paper that was attached to the return was typed in our office. The text was prepared by McGuigan & Kilcullen.

Q. And submitted to you? A. Yes, sir.

Q. Discussed with you? A. Yes, sir.

[8254] Q. And approved by you? A. Yes, sir.

Q. And that is the rider that reads:

> "On or about March 14, 1947 Tivoli Trading Company, S. A., a Panamanian corporation, transferred all its assets to Hannes & Company, another Panamanian corporation, in exchange for all its issued stock."

That is the first sentence of that rider, is it not? A. Yes, sir.

Q. You were informed of those facts by somebody prior to the time that that rider was included in that income tax return, were you not? A. Yes, sir.

Q. It goes on:

> "The charter and corporate powers of Hannes & Company, S. A. and the terms of its common stock are the same in all material respects with the charter, corporate powers and common stock of Tivoli Trading Company, S. A. At the time that the stock of Hannes & Company S. A. was received in exchange for stock of Tivoli Trading Company, S. A. the assets of Hannes & Company S. A. were subject to contingent liabilities not then determinable."

Were you informed of that before that was [8255] included in the return? A. Yes, sir.

Q. "These obligations were assumed by Hannes & Company, S. A. Subsequently and in about May, 1947 the assets of Hannes & Company S. A. were blocked by the Canadian Government pending the determination whether any Canadian citizen or corporation had any interest therein."

Were you informed of that before the return was filed? A. Yes, sir.

[8256] Q. It goes on:

> "The assets had not been released at the close of the taxable year and have not yet been released as of this date."

That was the information that you received before the return was filed? A. Yes, sir.

Q. And the last paragraph:

> "It is expected that the questions raised by the Canadian Government will be finally determined before the close of 1948 and it will be possible at that time to determine the amount and to liquidate and discharge the liabilities of Hannes & Company, S. A. When that has been done it is the intention of the taxpayer to liquidate Hannes & Company, S. A., at which time the taxpayer's gain if any will be returned for taxation."

That was all information that came to your attention before the tax return was filed? A. Yes, sir.

Q. And when you were advised that it was the intention of the taxpayer to liquidate Hannes & Company, did

you know that was in accordance with the advice you [8257] had given to the taxpayer? A. No, sir.

Q. Who did give him that advice, do you know? A. McGuigan & Kilcullen.

Q. He was advised by his then-lawyers, McGuigan & Kilcullen? A. Yes, sir.

Q. By the way, did you know that McGuigan & Kilcullen were formerly associates in the Root firm, come from the Root firm? A. I know that McGuigan did. I didn't know about Mr. Kilcullen.

Q. Now, you learned shortly prior to the filing of the income tax return for Mr. Klein for the year 1947, Government's Exhibit 350, that a jeopardy assessment had been levied against him, against his wife and against his company, H. Harvey Company, Limited? A. Two months before.

Q. And copies of that jeopardy assessment were furnished to you by somebody, were they not? A. The marshal who served the assessment left a copy at our office, because that was the current address of Mr. Klein.

[8258] Q. So your office was served by a United States Marshal? A. I think he was a marshal.

Q. Some federal officer? A. Yes, sir.

Q. With copies of the jeopardy assessment? A. Yes, sir.

Mr. Kiendl: May I have those assessments?

The Court: Do you have the letter designations?

Mr. Bauman: They are defense exhibits, Judge. We don't have them.

The Court: I just asked the defense counsel's table if they have the letter designation. If you

don't have the exhibits, I can let Mr. Kiendl have my copies.

Mr. Kiendl: Could I borrow your Honor's copies?

The Court: Yes, if you will give me the letter designation, because I don't recall it.

Mr. Kiendl: DQ down to DW, I think. I think the first one is DQ.

The Court: Here they are.

Mr. Kiendl: Could I have DQ to DW, your Honor, [8259] including the 90-day letters?

The Court: The 90-day letters also?

Mr. Kiendl: Thank you very much.

The Court: DQ through DV.

Q. Are these documents that I show you, Defendant Klein's Exhibits DQ, DR and DS what you understood to be the jeopardy assessments or were they these letters, DT, DU and DV, the 90-day letters? A. No, I assumed that the statement of income tax due, DQ, DR and DS, were the jeopardy assessments.

Q. Are those the documents that were served on your office by some federal official? A. Yes, copies of these.

Q. Copies of those? A. Yes, sir.

Q. Did they also serve on your office copies of the 90-day letters? A. No, sir, they did not, although I have copies of them.

Q. You obtained copies of the 90-day letters shortly after they were served on Mr. Klein and his wife and his company? A. Yes, sir.

Q. And you knew, did you not, that these 90-day letters constituted a determination of alleged [8260] deficiencies that were due from Mr. Klein, his wife and his company to the Government for unpaid federal income taxes? A. Right.

Q. And you knew, did you not, as a result of your experience both as a lawyer and an accountant that the only recourse or relief to the taxpayer was to go to Court and obtain a redetermination of that deficiency? A. Right.

Q. You know that the only Court available was the Tax Court of the United States? A. Right. Of course, I would like to amend that answer by saying that the taxpayer also had recourse to the Bureau to amend the assessment.

Q. If he could convince the Bureau that it made a determination that was wrong he had recourse to that? A. Yes.

Q. But he was notified that unless within 90 days he applied to the Tax Court for a redetermination of the alleged deficiency, the alleged deficiency would be final and conclusive? A. Correct.

Q. Now, during this period, from the time of [8261] the filing of the jeopardy assessment down to the time you were paid $25,000 in 1951, you and your firm did a lot of work for Mr. Klein and his companies, did you not? A. Yes; devoted a lot of time to it.

Q. And from 1951 on until 1955, when you received another payment of $25,000, you did a lot of work and devoted a lot of time to his tax problems and those of his company? A. I don't mean to testify that the second

payment was for the second period and the first payment was for the first period. Both payments were for the entire period. One was on account; the first one.

Q. And the second one was—— A. In payment in full.

Q. But during that period from the time of the first payment to the time of the second payment you had done a lot of work and put in a lot of time on these tax problems, had you not? A. Not nearly as much as before that.

Q. Well, do you mean that the time you had expended, the work that you performed between 1951 and 1955 was not nearly as much as the time and [8262] the work prior to 1951? A. Yes, that's right.

Q. Did you submit the bill for 1951 on account, $25,000? A. My firm did.

Q. Your firm did, and by the way, your firm was paid the $25,000, the first payment; the second payment was paid to you individually, wasn't it? A. That's correct.

Q. And the reason for that was that after this indictment in May of 1954 your firm dissolved, did it not? A. No, sir. Prior to the indictment I withdrew from the firm with my son.

Q. You withdrew from the firm? A. Yes.

Q. So that there was no firm at the time of the second payment, and the second payment was paid to you personally with the knowledge and approval of your two former partners? A. Correct.

Q. Schlesinger and Mayers? A. Right.

Q. Is that right?

[8263] Now that final payment of $25,000 was paid to you in Los Angeles, wasn't it? A. No, it was paid to me here in New York.

Q. Paid to you here in New York? A. Yes.

Q. It was as a result of a trip you had taken to Los Angeles and some conversation you had with Mr. Klein, was it not? A. In December 1954, yes.

Q. And on that occasion you demanded $100,000, didn't you, for your services? A. Yes, sir.

Q. And you finally compromised and settled it for $25,000, is that right? A. $100.000 included the 25 I had originally received in 1951.

Q. You wanted $75,000 more? A. Yes.

Q. And you compromised and settled that for $25,000? A. Yes, I did.

Q. And gave a full and final receipt for it? A. Yes, I did.

Q. And a release? [8264] A. Yes, I did.

Q. Now will you tell us, Mr. Haas, was it in February 1949, the first time that you offered to repay this Ribera loan to Mr. Klein? A. No, I think it was the latter part of January, when I first heard that the account had been unfrozen.

Q. I thought you testified that was in February of 1949, but in any event—— A. Whenever it was unfrozen.

Q. It was February 1949 or a month or two before then, is that right? A. Correct; yes.

Q. And you had heard that it was unfrozen from what source? Not Mr. Klein? A. No, I think the bank notified me.

Q. The bank notified you that your funds were free and clear? A. Yes.

Q. And did you call up Mr. Klein or did you wait until he came to your office to have a conference with him about it? A. I waited until he came to my office because he was coming regularly.

[8265] Q. And when he got to your office you told him that you had received word from the bank that the $35,000 was now free and clear? A. Yes.

Q. And in substance you told him that the business had not gone forward as anticipated and you returned the money to him? A. Yes.

Q. You didn't have a check and say "Here's the check for the $35,000 you were good enough to loan the Ribera Corporation back in 1947"? A. No.

Q. There was no formal tender of any kind of any document? A. No, there was no need of any formal tender between Mr. Klein and myself.

Q. You said to him, in substance, "I will give you the money back whenever you want it"? A. Right.

Q. And he immediately said, "You keep it. I want no part of it"? A. Right.

Q. What did you say about that? Did you thank him for that? [8266] Sure I did.

Q. Now, up to that time La Ribera had not done one single iota of business of any kind, character or description, had it? A. No, it hadn't.

Q. From the time of the meeting in the hotel up in Toronto, when the check was deposited, absolutely nothing had been done by Ribera in the way of meetings, election of officers, deposits in bank, withdrawals from bank or anything of that kind? A. Right.

Q. Not a single solitary thing that you can think of? A. Nothing.

Q. Do you know of any reason why Mr. Klein would give your corporation $35,000 under those circumstances? A. I think I know.

Q. What was it? A. Mr. Klein was preparing to make a statement to the Bureau that neither he nor any member of his family nor any corporation that he was interested in had any interest in any of the Cuban corporations formed by Alprin, Koerner and Roer.

Q. He didn't have any interest in any Cuban or [8267] Panamanian corporations form by Alprin, Koerner or Roer that you knew of with the exception of an indebtedness that you testified to of $35,000 from La Ribera to Tivoli Corporation? A. Correct.

Q. That was the only one you know of? A. That was the interest that he had.

Q. Now, why didn't you give Mr. Klein a note for that $35,000? A. He never asked me for it.

Q. I didn't ask you that. Why didn't you give it to him? Is that the only reason, because he never asked for it? A. Well, that was my answer. He never asked for it. That is why I didn't give it to him.

Q. Didn't you know from your experience that that would regularize and formalize that transaction if you gave him a note? A. That is not so.

Q. You didn't know that? A. No, I knew that what you say is not so.

Q. That is what I mean. It wouldn't regularize or formalize that transaction if you had given him a note? [8268] A. No. Now, Mr. Kiendl, you are distorting what I say.

Q. I am not distorting anything that you say, sir. A. Yes, you are.

Q. I am asking you some questions and I will ask you please to answer them. Didn't you know, with your ex-

perience, that the regular and formal way of borrowing money from a corporation that you controlled was to give a note evidencing that indebtedness? A. No, sir, that is not so.

Q. You didn't know? A. There are loans on open account without notes.

Q. And you considered this a loan on open account? A. Yes, I did. If Mr. Klein had asked me for a note we would have given it to him.

The Court: I think we will suspend now until Monday at two-fifteen.

(Adjourned until Monday, August 8, 1955, at 2:15 p. m.)

* * *

New York, August 8, 1955, 2:15 o'clock P. M.

[8273] MAURICE A. HAAS resumed the stand.

Cross-Examination Continued By Mr. Kiendl:

Q. Mr. Haas, you have testified that you had a talk with Mr. Klein about the check that Mr. Alprin got to the order of the corporation, Economica? A. Yes, sir.

Q. You said that that talk took place shortly before March 15th income tax date in 1948, when you were preparing Mr. Alprin's income tax return for the year 1947, is that right? A. Yes, sir.

Q. And in the course of that conversation you tried to tell Mr. Klein what Mr. Alprin had told you about the circumstances under which he received that check? A. Yes, sir.

[8274] Q. You were checking Mr. Alprin's story to you to see if it were correct, were you not? A. Not exactly that.

Q. That is what you said you were doing, weren't you? You said you were checking Mr. Alprin's explanation? A. May I complete my answer?

Q. Yes. However, would you please answer that responsively if you will. You testified here you were checking Mr. Alprin's explanation. A. Yes, sir.

Q. Go ahead and complete your answer. A. While I had no reason whatever to doubt Mr. Alprin's statement, yet, in view of the fact that I was seeing Mr. Klein so frequently, I thought I would ask him about it.

Q. It was not because you doubted Mr. Alprin's explanation, it was because you knew Mr. Klein so well you did not hesitate to ask him what the explanation was? A. Yes, sir.

Q. That's right, isn't it? A. Yes.

Q. When you mentioned that to Mr. Klein he did not want to talk about it, did he? A. No, sir.

[8275] Q. And he said, "If you have any questions regarding Mr. Alprin's check, go to Mr. Alprin and talk to him about it," in substance? A. Yes, sir.

Q. And you, from what Mr. Klein told you, got the impression that Mr. Klein wanted you, to use the expression that you used, "to mind your own business"? A. More or less, yes, sir.

Q. That is what you told us here on Friday, wasn't it? A. Yes, sir.

Q. Thursday. And that is what you did; you didn't say anything more to Mr. Klein about it? A. No, sir.

Q. Now you testified on Thursday, too, that you had some vague recollection that you had heard something about Mr. Klein not liking your opinion, Exhibit 358.

Mr. Kiendl: May I have that?

Q. Your second tax opinion in February, 1945. A. Yes, sir.

Q. And I am correct that you so testified that you had some vague recollection of hearing something about Mr. Klein's disliking that? [8276] A. Very vague.

Q. And you testified, did you not, that Mr. Alprin, told you that Mr. Klein had told him that that opinion was gratuitous? A. It was very vague, but it was something along those lines. Very vague in my mind.

Q. That is what you testified to here, wasn't it, that Mr. Alprin told you that Mr. Klein had told him that a part of your opinion was gratuitous; that is your language, isn't it? A. Yes, but that was just a vague recollection.

Q. You had a vague recollection of Alprin telling you just about that? A. Yes, sir.

Q. But nothing else regarding that conversation with Mr. Alprin? A. Not that I remember.

Q. So you have a vague or a hazy recollection in your mind that at sometime, some place, Mr. Klein did take exception to a part of your opinion? A. Yes, sir.

Q. And when Mr. Alprin told you, in substance, that Mr. Klein thought a part of that opinion was gratuitous, did you ask him what part of it? [8277] A. He told me. I did not have to ask him.

Q. Do you remember what part of it he said was gratuitous? A. I have again a vague recollection that it was the last paragraph.

Q. And that is the paragraph in which you state:

> "Let me caution you for the second time that the Treasury Department is not fully in accordance with these principles and you may be required to resort to the courts to sustain them. Let me state further as a practical matter that if instead of just performing the functions I described above your president is in fact doing your business here, such as supervising the carrying out of your agreement with Williams, supervising the shipment of the merchandise from Harwood to Williams, and caring for the multitude of details which must be involved in these transactions, then you are doing business here and subject to tax here. My opinion is based solely on the facts which have been given me and which I have outlined above."

Assuming that I have read that paragraph accurately, Mr. Haas, is that the paragraph that you [8278] referred to? A. The last sentence of the paragraph.

Q. The last sentence or all of it? A. Not the first sentence.

Q. Well, the second sentence, "Let me state further as a practical matter"? A. Yes.

Q. That is part of it? A. Yes.

Q. Now, when you had this vague——

Mr. Kiendl: Withdrawn.

Q. You have a vague recollection that Mr. Alprin told you, first, Mr. Klein thought it was gratuitous in part, and, second, that the part that he thought was gratuitous was this part that I have just read and we have just discussed; is that right? A. Yes, sir.

Q. When Mr. Alprin told you that, do you have any vague recollection of his asking you any questions about it? A. No, sir.

Q. Do you have any vague recollection of your asking Mr. Alprin any questions about it? A. No, sir. The only reaction that I had with respect to that——

[8279] Q. No, I did not ask what your reaction was, please, Mr. Haas. I first want to find out whether Mr. Alprin asked you any questions further about it that you recall. A. I have no such recollection.

Q. Or whether you recall asking him any further questions about it? A. No, I have no such recollection.

Q. When you have a vague recollection that Mr. Alprin said this was gratuitous, didn't you inquire and say, in what respect is it gratuitous, what is wrong with it? A. I might have. I just don't remember.

Q. Isn't it a fact that Mr. Alprin told you that Mr. Klein had told him that he was not supervising the carrying out of the agreement with Williams, that he was not shipping merchandise from Harwood to Williams, and that was the reason that he took exception to your last paragraph of your tax opinion in February, 1945? A. Could very well be, but I have no such recollection.

Mr. Bauman: I move to strike that part of the answer, "could very well be," in the light of the

[8280] remainder of the answer, in which the witness said, "I have no recollection."

The Court: Granted.

By Mr. Kiendl:

Q. You are not prepared to deny that that is what Mr. Alprin told you on that occasion, are you? A. No, sir.

Q. Now you testified regarding the escrow arrangement that was made regarding the Koerner check, did you not? A. Yes, sir.

Q. And you knew, did you not, that the check to Economica for Koerner was in exactly the same amount as the check to Economica for Alprin? A. Yes, sir.

Q. Now, there came a time when the Koerner check was escrowed? A. Yes, sir.

Q. And you were one of the escrow agents? A. Yes, sir.

Q. Your partner was one? A. Yes, sir.

Q. Mr. Glassgold, the lawyer for Mr. Koerner, was one? A. Yes, sir.

[8281] Q. And Mr. Glassgold's partner was the fourth? A. Yes, sir.

Q. And that escrow arrangement contemplated holding that check in a safe deposit box for some period of time? A. Yes, sir.

Q. Now, was there an escrow agreement in writing? A. I think so.

Q. Do you know where it is? A. No, sir. I think Mr. Alprin has a copy of it.

Q. You think who? A. Mr. Alprin.

Mr. Kiendl: Have you a copy of the escrow agreement?

Mr. Donohue: I am sure we do, Mr. Kiendl. If you will just give me a few moments I will find it.

By Mr. Kiendl:

Q. Now, Mr. Glassgold, you knew, was the lawyer for Koerner? A. I was told he was the lawyer for Koerner.

Q. Were you told that he was also the lawyer for Roer? A. Not at that time, no, sir.

Q. Did you know that at some time he was the lawyer for Roer? A. Yes, I found out [8282] since.

Q. Did you know he was the lawyer for Alprin? A. Who, Glassgold?

Q. Glassgold, sometime. A. No, I never heard that.

Q. Did he ever appear for Mr. Alprin at any time that you know of? A. Not that I know of.

Q. I show you this letter of December 26, 1950. Is that the document or copy of the document that you referred to as the escrow agreement? A. Yes, sir.

Mr. Kiendl: We offer it in evidence.

Mr. Bender: May we see it?

Mr. Kiendl: Sorry. I thought you had.

Mr. Bender: No objection.

Mr. Bauman: May I ask the witness one or two questions about this document?

Preliminary Examination By Mr. Bauman:

Q. Mr. Haas, the document which has just been exhibited to you, and which I now hand to you, is completely typed; is that correct? A. Yes, sir.

Q. The place for the signature is typed? [8283] A. Yes.

Q. And that appears to be a ribbon copy which you have there; is that right? A. That's right.

Q. It is not signed—— A. No, this is not signed.

Q. —by anybody, is it? A. This is not the signed copy, no.

Q. Did you prepare that copy of the agreement? A. I don't think so.

Q. Did you ever see that copy of the agreement before? A. This particular sheet?

Q. Yes. A. This one I have never seen, no. I saw the original.

Q. The original one was signed; is that correct? A. Yes, sir.

Q. And this is in itself a ribbon copy; is that correct? A. I think so.

Mr. Bauman: May I hand this up to the Court?

(Document handed to Court.)

Mr. Bauman: Your Honor, until such time as the original is produced or its absence accounted for, and this identified as secondary evidence, the [8284] Government objects.

Mr. Donohue: If it please your Honor, since I anticipated offering it, I obviously do not object, and I think I should say further to your Honor I issued a subpoena to the bank. If they have an original of that record, we will ask the bank to bring it here.

The Court: When?

Mr. Donohue: We were going to have them here this afternoon. In the present status of the case we asked them not to come until tomorrow morning.

The Court: I see. Under the circumstances, I won't accept this in evidence at the moment. It will

be marked Defendant Klein's Exhibit FG for identification. If the original is not produced, then upon proper proof, why, we may accept the other, but for the time being the Government's objection is sustained.

(Marked Defendant Klein's Exhibit FG for identification.)

By Mr. Kiendl:

Q. Mr. Haas, this Defendant Klein's Exhibit FG for identification, so far as you know, is the only escrow agreement that was ever executed? [8285] A. It is the only written one, yes, sir.

Q. The only written one? A. Yes, sir.

Q. And, as a matter of fact, there never was any written escrow agreement at all, was there? It is just a direction to the safe deposit company of the names of the individuals who were to have access to that box? A. That was the written part. We had oral instructions besides.

Q. I am asking about the written agreement. There never was any written escrow agreement, was there, Mr. Haas? A. I don't know what you call that paper in your hand, then.

Q. Well, do you consider the instructions to the safe deposit company to make the deposit box accessible to individuals an escrow agreement? A. That was our understanding of that paper.

[8286] Q. Was there any written agreement showing the terms and conditions under which you and these other people held this check? A. No, sir.

Q. There never was any written agreement of that kind ever, was there? A. No, sir.

Q. There wasn't any letter or other document that you know of that contained the terms and conditions of that escrow agreement? A. Not that I recall.

Q. And you have tried hard to recall and you have searched your files and talked to Mr. Alprin and to Mr. Roer and others about it, haven't you? A. No, sir, I have not.

Q. You haven't searched your files? A. First of all, what has Mr. Roer got to do with it?

Q. I didn't ask you that. A. Yes, you did.

Q. You searched your files was my last question. Have you searched your files to find out if there was any copy of that? A. No, sir.

Mr. Bender: I object to that. That was not his last question. The question was, "Did you search [8287] your files, did you talk to Mr. Alprin, to Mr. Roer and anybody else?"

The Court: And then he asked, "Did you search your files?" as I recall it. I think it is unimportant. Overruled.

Q. Did you talk to Mr. Alprin about it? A. No, sir.

Q. Did you talk to Mr. Glassgold about it? A. No, sir.

Q. Did you talk to Mr. Schrier about it? A. No, sir.

Q. You testified on Thursday, I think, that in some conversation with Mr. Klein he said to you something to the general effect that it was a good thing that these three drafts or two drafts were still in existence, did you not? A. Not that they were still in existence.

Q. You said they were still here. A. Still being held.

Q. In the event that he had to pay a capital gain on that amount of money, he could still get the money out of those drafts? A. He would get the capital gains that he paid out of those drafts.

[8288] Q. Whatever the tax was, he could reimburse himself out of those drafts? A. Or be reimbursed.

Q. That was the substance of what you told us on Thursday in that situation? A. Yes, sir.

Q. Did you understand that Mr. Klein was taking care of the tax situation so far as that corporation was concerned, Economica, and the tax situation so far as Mr. Alprin was concerned and Mr. Koerner? Did you understand that? A. My understanding was he was trying to.

Q. You knew, did you not, that his lawyers refused to go along with that, did you not? A. Yes.

Q. You testified, did you not—you were examined by Mr. Victory and Mr. McCarthy, were you not? A. Yes.

Q. In the course of that did you testify as follows, on page 4710 of this record, as follows:

> "Q. Was anyone present at the time he made these statements to you? A. I am not sure. Rosenberg was with us most of the time. He didn't discuss his tax case before [8289] Silver or Rokoff so whenever they were there we never talked about it and I know he inquired of McGuigan and Kilcullen whether they wouldn't in their settlement attempts include the corporations of these men and the lawyers said No."

Did you give that testimony? A. Yes, I did.

Q. So that you knew, did you not, that McGuigan and Kilcullen, the lawyers then representing Mr. Klein, had refused to include the corporations of Mr. Alprin and Mr. Koerner in the settlement? A. They said no, they weren't going to do it.

Q. Now, Mr. Haas, after your trip to Toronto in March of 1947, you went back again, did you not, in May of 1947? A. Yes, I did.

Q. You went back with Mr. Alprin? A. I don't think so, I am not sure.

Q. Did you know that Mr. Alprin made a deposit in Toronto, Canada, of his check, that is, the check to the order of his corporation? You know the check I mean? A. Yes.

Q. For $264,000, whatever the amount was. A. Yes.

Q. He deposited that in Toronto on May 5, 1947, [8290] you knew that, did you not? A. Yes, they told me he had.

Q. Didn't you go up with him when he deposited that? A. I was with him when he deposited it.

Q. So you went up there with him? A. I would like to amend that. I would say I was with him at the time he deposited the check.

Q. So either you went to Toronto with him or you met him there when he deposited the check? A. Yes.

Q. Is that what you are trying to tell me? A. I am trying to tell you I went up there with him, but I wasn't with him when he deposited the check. I was taking care of my own business and he was taking care of his.

Q. You went up there with him? A. Yes.

Q. When you got to Toronto you took him to your cousin, the accountant, Mr. Davis? A. I didn't take him.

Mr. Davis met us at the bank pursuant to a telephone call I made to Mr. Davis.

Q. He went to the bank with you? A. Yes, sir.

Q. And you called your cousin, Mr. Davis, to meet you at the bank? A. Yes.

[8291] Q. And Mr. Davis, your cousin, met you at the bank? A. Yes.

Q. And arrangements were then made for the deposits of the check? A. Between Mr. Alprin and Mr. Davis.

Q. And arrangements were then made to have Mr. Davis act as the assistant secretary of that corporation? A. So I understand.

Q. For the bank's purposes? A. Yes.

Q. So you understood? A. Yes.

Q. Did you know that the check upon being deposited was immediately split into three different accounts? A. I have found that out since.

Q. You did not know that at the time? A. I don't think so.

Q. When Mr. Alprin made the arrangements with the bank to do that on that day, if he made them, you were not present? A. No, sir.

Q. After you learned that Mr. Klein had sold out on January 20, 1947, did you represent any of the corporations thereafter, Regan Potter, Duncan Harwood [8292] Company, Ltd. or any of the others? A. I had some work for them.

Q. You had a lot of work for Regan Potter, did you not? A. Yes.

Q. As the tax consultant for Regan Potter you sent them a substantial bill? A. I was not the tax consultant for Regan Potter.

Q. What were you for them? A. I just represented them on one piece of work.

Q. A tax matter? A. No, sir.

Q. On one piece of work? A. Yes, sir.

Q. You got a fee from Regan Potter for your services? A. Yes, sir.

Q. Did you represent Duncan Harwood & Company, Ltd. after January 20, 1947? A. No, sir.

Q. Would you look at this document, Mr. Haas, and see whether that refreshes your recollection as to whether or not you ever represented Duncan Harwood & Company, Ltd. after January, 1947 (handing to witness)? A. Yes, sir, this reminds me I wrote a letter on their behalf in November, 1948.

Q. However, outside of that matter, whatever it was, you have no recollection of ever having been their [8293] counsel? A. No, sir.

Mr. Kiendl: That is all.

Cross-Examination by Mr. Donohue:

Q. Mr. Haas, do you recall a few days ago Mr. Klein testifying that sometime in 1944 up to the present time that he had not been in the Royal Bank of Canada, Toronto Branch? A. I believe so.

Q. I hand you Government's 325 in evidence, which is the account of Hannes & Company, Ltd., S. A., in the Royal Bank of Canada, Toronto Branch, and ask you to read the deposit made in that branch of the Royal Bank of Canada in 1949 by Hannes & Company. A. This deposit is 1947.

Q. What is the deposit in 1947? A. May 7th, $1,042,-522.78.

Q. That is a deposit from that record of Hannes & Company in the Toronto Branch of the Royal Bank of Canada, correct? A. This is the Royal Bank of Canada, I cannot tell whether it is from Toronto or where it is from.

Q. Will you look at the second document and tell us if you can identify it. A. The Royal Bank of Canada, Toronto.

[8294] Q. Mr. Haas, a few moments ago when you identified a document for Mr. Kiendl, which I handed Mr. Kiendl, you said to Mr. Kiendl that at no time concerning the Koerner check was there a written escrow agreement other than the document which you identified, do you recall that? A. Yes, so far as I recalled.

Q. Was there in fact an oral agreement? A. Yes, sir.

Q. Will you tell us what the oral agreement was and with whom was that oral agreement entered into? A. The four of us were to hold that check in a safe deposit box until Mr. Alprin told us that it could be released.

Q. And when you say the four of us, would you mind telling us who the four parties to that agreement were? A. Mr. Glassgold, Mr. Schrier, Mr. Schlesinger and myself.

Q. May I, Mr. Haas, call your attention to page 8165 of the stenographer's minutes, and if you will bear with me I would like to read two or three questions and answers, reading from page 8165, questions by Mr. Bauman of you:

> "Q. So it was perfectly clear to you from 1948, before you even filed that 1947 tax return, that the [8295] Internal Revenue Service was interested in what happened to the proceeds of the Harwood Whiskey situation with a view to determining whether or not the taxes due by the individuals who

received that money were properly computed and paid to the Treasury Department? You don't doubt that, do you? A. Yes, sir, I doubt that very much. The only ones I knew they were interested in were Mr. Klein, his wife, and the H. Harvey Company.

"Q. You did not feel as an accountant and as a tax expert, Mr. Haas, that at the time of those jeopardy assessments the Revenue Service was interested in what happened to the proceeds of the Harwood Whiskey deal? A. I don't know what that question means.

"Q. Would you like it repeated, Mr. Haas? Do you think you would understand it better if you heard it again? A. I would like it reframed.

"Q. I ask you as an accounting expert and as a tax expert whether you did not know, Mr. Haas, in 1948 when the Internal Revenue Service filed the jeopardy assessments which are in evidence here, —that the Treasury Department and its Internal [8296] Revenue Service were then and there engaged in the determination or in the investigation of the total amount of income arising from the Harwood deal and the payment of the taxes due on that income by the individuals who received it. A. Only as with respect to Mr. Klein, his wife, and the H. Harvey Company.

"Q. And was that because of the jeopardy assessments were only made out to them; is that right? A. That's right. If they wanted to collect from Alprin they would have served him with a jeopardy assessment, too."

As a matter of fact, was there ever a jeopardy assessment served on Mr. Alprin? A. Not to my knowledge.

[8297] Q. And you did not intend to imply by that answer that there was a jeopardy assessment or that one was likely to be filed? A. No.

Q. I hand you two pieces of paper and ask you, please, sir, if you can identify them? A. Yes, sir.

Mr. Donohue: May I hand a copy to your Honor?

Q. And they are what, Mr. Haas?

Mr. Donohue: Oh, excuse me. Will you please mark these Defendant Alprin's Exhibit next for identification, both as one exhibit, if I may, your Honor.

(Marked Defendant Alprin's Exhibit FH for identification.)

By Mr. Donohue:

Q. You identify these two pieces of paper as being what, Mr. Haas? A. The long, narrow sheet is a declaration of estimated tax for—may I look at it, have it in my hand?

Q. Sure. A. —for Morris O. and Sadie Alprin for the year 1952, and the long sheet is [8298] instructions to Mr. Alprin as to what to do with that declaration.

Q. And you or your office prepared those for Mr. Alprin? A. That was prepared by my office, yes.

Mr. Donohue: I offer them in evidence, if your Honor please.

Mr. Kiendl: If your Honor please, the defendant Klein objects to them as not binding on him in any way.

Mr. Bender: Defendant Haas has no objection, your Honor.

Mr. Bauman: No objection, your Honor.

(Defendant Alprin's Exhibit FH for identification received in evidence.)

The Court: The objection thereto of the defendant Klein is sustained.

By Mr. Donohue:

Q. Do you know of your own knowledge, Mr. Haas, whether or not subsequent to the preparation by your office of this estimated tax return for Morris and Sadie Alprin for the year 1952 a second or another estimated tax return was prepared? A. Yes, sir.

[8299] Q. And do you know by whom that was prepared? A. I think that was prepared by our office too. But I am not sure. I know we figured it.

Q. Now, Mr. Haas, when you testified a day or two ago under cross examination, at the time the interrogatories for Mr. Klein were being prepared by his counsel, was Mr. Alprin present at the time those interrogatories were prepared? A. No, sir.

Q. Or the answers were prepared? A. No, sir.

Q. And you have heretofore testified that in the succeeding years from 1947 through 1951 you prepared the tax return for Morris Alprin. At any time during that period did he say anything to you or did he express his attitude with

respect to the draft which he was holding? A. Well, I remember that after 1949, when the account was unfrozen, that he was constantly grumbling about the amount of income that he was losing because he could not use the check or the draft.

Q. May I ask you, Mr. Haas, if you can identify that document or that piece of paper? A. Yes, sir.

[8300] Mr. Donohue: Would you mark this Defendant Alprin's FI for identification.

(Marked Defendant Alprin's Exhibit FI for identification.)

By Mr. Donohue:

Q. And you identify that as being what, Mr. Haas? A. This is an affidavit that I signed on September 15, 1953.

Mr. Donohue: I offer it in evidence, if your Honor please.

May I ask a further question while we are waiting?

Q. With whom was this affidavit filed or to whom was it presented? A. My understanding is that it was presented to the Department of Justice.

Mr. Bauman: May I ask the witness a preliminary question, your Honor?

Preliminary Examination by Mr. Bauman:

Q. Do you know, Mr. Haas, to whom the original of this affidavit was presented? A. No, sir, I do not.

Q. You don't know? A. No, not to whom.

[8301] Q. You recognize this as a copy of an affidavit which you prepared and signed in 1953? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Beyond that you don't know what happened to it? A. I was told that it was filed——

Q. I know, but you don't know of your own knowledge what happened to it? A. Oh, no, no, sir.

Mr. Kiendl: If your Honor please, the defendant Klein objects to it on the ground that it is not binding on him and constitutes a purely self-serving declaration.

The Court: Sustained as to the defendant Klein.

Mr. Bender: I have no objection.

Mr. Bauman: Will your Honor bear with me for just one moment, please.

Thank you, sir.

No objection.

(Defendant Alprin's Exhibit FI for identification received in evidence.)

Mr. Donohue: I have no further questions of Mr. Haas. May I reserve until Mr. Haas' [8302] examination has been completed the reading of this and the other exhibit to the jury, your Honor?

The Court: Yes.

Mr. Kiendl: If your Honor please, I did not quite get it. Did your Honor sustain or overrule our objection?

The Court: I sustained the objection of Klein. It is received only as to the defendant Haas, and the Government did not object thereto.

Mr. Kiendl: I did not hear that. Thank you.

Redirect Examination by Mr. Bender:

Q. Mr. Haas, on Mr. Bauman's cross examination he discussed with you a question of how long you retained certain work sheets in connection with work done by your firm; do you recall that? A. Yes, I do.

Q. And in particular I think he discussed with you the question of the retention of any work sheets that you had when you prepared the consolidated balance sheet, Exhibit 371; do you remember? A. Yes, I do.

Q. And am I correct that you indicated that so long as you had a typewritten report, which was [8303] Exhibit 371, the practice in your office was after a period of time to destroy whatever work sheets you had? A. Yes, sir.

Q. Now, just merely to set the record straight, was that a procedure that you followed even with regard to the preparation of tax returns for your clients? A. No, sir. I omitted to state that with respect to tax returns, because we have no typewritten copies, we keep all the work sheets.

Mr. Bender: No further questions.

Mr. Bauman: I have some more questions, your Honor.

Recross Examination by Mr. Bauman:

Q. As I understand it, Mr. Haas, when Mr. Kiendl was cross examining you, you testified that the original com-

putations which you made in either September or December of 1946 of Mr. Klein's share in the Harwood enterprises, that those computations were not substantially different than the final figures; is that correct? A. Yes, sir.

Mr. Bender: Your Honor, at this time may I [8304] note an objection merely from the point of view of procedure. As I understand it, Mr. Bauman, who is now taking over on recross, is limited with regard to what was brought out on redirect, and I will object to any question that Mr. Bauman now asks which was gone over on cross examination because it is beyond the purview of redirect examination.

The Court: Overruled.

By Mr. Bauman:

Q. Now, Mr. Haas, you remember the question I have just asked you? You did testify in response to Mr. Kiendl's question that your original computation, whether it was made in September or December, 1946, of Mr. Klein's share of the Harwood enterprise was substantially the same as the final figures; is that right? I believe your language was that it was not substantially different. A. I believe, but—I believe that my testimony was that the computation, the rough computation that I made in September or October of 1946 was not substantially different from the computation that I made in December, 1946.

Q. And if you testified otherwise, you were mistaken; is that correct? [8305] A. I don't understand that.

Q. Well, let me see if I can make it clearer to you. You do not say, sir, that the computation which you made in

December of 1946 was not substantially different than the final figures, do you? A. The final figure arrived at in December, 1946, with respect to what other final figures are you referring to, Mr. Bauman?

Q. The final figures that resulted in the preparation of your consolidated balance sheet. A. No, they were the same.

Q. They were the same? A. Yes.

Q. Now let me ask you with respect to the figures that you got in September, 1946, and those contained in the final balance sheet. A. The rough figures that I prepared in September, 1946, were substantially the same as the figures that I prepared in December, 1946.

Q. Well, now, let me ask this question, just so I am sure you understand what I am getting at, Mr. Haas: The payment to Mr. Klein, I believe you have stated, or if you haven't, correct me, was based upon your final computation of the Klein interest; [8306] is that correct? A. I don't believe I ever testified to that effect.

Q. Well, let me ask whether you know that, Mr. Haas? A. I don't know that.

Q. You don't know that.

Now, you do know, however, how much Mr. Klein was paid for his share of the Harwood venture; is that right? A. Yes, sir.

Q. And can you tell me, please, with that knowledge, whether that was not based entirely upon the figures that you computed? A. I don't know whether it was or not.

Q. You never compared the amount of money that Mr. Klein got, for instance, in connection with the preparation of his 1947 return with the amount of money which

you said he should have gotten, for instance, in the consolidated balance sheet or based upon the consolidated balance sheet; is that right? A. The consolidated balance sheet was computed in January of 1947, and I found out how much Mr. Klein got sometime in May of 1948, about 16 months later. I did not make any comparison.

[8307] Q. Well, sir, the original figures that you got in September of 1946 were substantially different, were they not, than the final figures you submitted to Mr. Klein after he told you about that correction of the million and a half dollars; is that right? A. I will say that the statement that I prepared in December, 1946, before the correction was made was substantially different from the consolidated balance sheet by that million and a half. I have no recollection just what the September figures were because I took them off a work sheet rapidly and made a computation on a piece of scratch sheet and that was the end of it.

Q. Would you correct me if I am wrong about this, Mr. Haas: Did you not say that Mr. Klein told you about the so-called mistake on the Regan Potter trial balance and balance sheet sometime in January? A. Yes, sir.

Q. And so your figures compared in December, or at any time previous to January, when Mr. Klein told you about that, showed that Regan Potter—I am talking now about the earlier figures—showed that Regan Potter was worth a million and a half dollars less [8308] than the figures of that company after you were told about that so-called mistake; is that correct? A. That is correct.

Q. So that to that extent, at least, Mr. Haas, we are agreed that unless you regard a million and a half dollars as not a substantial amount, the original computations in

September or December were substantially different than the final figures; is that correct? A. And the final statement made in January, 1947?

[8309] Q. Yes.

Mr. Bender: Your Honor, Mr. Bauman previously went into this on his cross-examination. Obviously he did that with the view of trying to raise some kind of question as to the accuracy of the 1947 return. I objected at that time because that issue had been decided in your determination of the first four counts, and I see now we are going right back again. I must object again on the same basis.

The Court: Overruled. Let me ask you this question: Would Klein's share in liquidation of the Harwood venture as reflected by the consolidated statement that you prepared based upon Rokoff's trial balances, balance sheets and profit and loss statements be any different as reflected by the consolidated statement after you made the change in the million and a half?

The Witness: Yes, sir.

The Court: That million and a half represented a transaction between Regan Potter and one of the other corporations, did it not?

The Witness: And Tivoli's figures—and Tivoli, whose figures were not included.

The Court: Tivoli. All right, that explains [8310] it.

By Mr. Bauman:

Q. Mr. Haas, were you an officer or director of Hannes & Company? A. For a period of maybe a half hour.

Q. Was that when you were up in Toronto with Mr. Rosenberg, that half hour? A. Yes, sir.

Q. Will you tell me, please, how did you happen to become an officer of Hannes & Company? A. When I was up in Toronto, I think it was in March, 1947, I got a telegram from Mr. Rosenberg that he was coming up about 5 o'clock, and asked me to meet him. He met me at the hotel at which I was staying, and he told me that he had come up there for the purpose of holding a meeting of the board of directors of Hannes & Company, and he asked me if I woudn't act as one of the directors of Hannes & Company. I said I would be very glad to. I don't remember when the minutes of those meetings were prepared, but I believe he had them all prepared when he came up there. I then acted as a director of Hannes & Company for that meeting and then signed a resignation as an officer and director immediately thereafter.

[8311] Q. Do I understand that in connection with that meeting there was a formal meeting held, Mr. Haas? A. I don't know how to define the difference between a formal and an informal meeting. We did not have somebody sitting at a table, banging a gavel. I just happened to be there, Mr. Rosenberg came up and he had minutes all prepared, and he said, "Here they are." I looked at them and they looked all right to me, and then he handed me a formal resignation as an officer and director, which I also signed, and that was the meeting.

Q. That was the meeting, is that correct? A. Yes.

Q. You say you believe Mr. Rosenberg had those minutes of Hannes & Company with him at the time he came up? A. I said I believe it, but I am not sure, Mr. Bauman. He might have had them typed with the public stenographer in the hotel.

Q. By the way, did this meeting take place in the same place, namely, the Royal York Hotel, on March 19, 1947, as the meeting of Commercial La Ribera? A. It was the same day, yes.

Q. And a copy of the resolution of which I show you (handing to witness)? A. Yes, it was the same [8312] day.

Q. Did Mr. Rosenberg attend the meeting of La Ribera? A. No, sir, he did not.

Q. However, you attended the meeting of Hannes, is that correct? A. Such as it was, I attended it.

Q. Who prepared the minutes which I have just shown you, Mr. Haas? You can look at them further, if you like, A. You mean the minutes or this resolution?

Q. Let us start with the minutes and then we will come to that resolution. Do you have the minutes of La Ribera, Mr. Haas? A. I see no minutes here.

Q. Do you have the minutes of La Ribera reflecting that meeting? A. No.

Q. Isn't it a fact that just that resolution for bank purposes was made? A. The resolution just for bank purposes, yes.

Q. No minutes were made? A. That's right.

Q. That resolution for bank purposes was prepared in Canada while you were there, so it might be left at the bank

at that time? A. I think it was given to [8313] me by the bank.

Q. You say you think the bank gave it to you? A. Yes.

Q. Was it prepared by Mr. Davis? A. No, sir.

Q. It was not prepared by you? A. No, sir.

Q. I believe you testified, Mr. Haas, that you were in Montreal in March, 1947, is that right? A. No, sir, I never testified to that fact at all.

Q. I am sorry, then. Please correct me that way if I am wrong. Were you in Canada in March, 1947? A. I was in Canada, Toronto.

Q. Were you in Montreal, in March, 1947? A. No, sir, I was not.

Q. Did I understand you to say on Mr. Kiendl's examination that you were in Canada with Mr. Alprin when Mr. Alprin had that check for $264,000? A. Yes, sir.

Q. Did you recommend to Mr. Alprin at that time that your cousin, Mr. Davis, would serve as the necessary Canadian officer of this corporation, Economica? A. I told him, when he told me about receiving the check, that there was a Canadian banking regulation which [8314] would require a resident Canadian to act as an officer, and I asked him if he knew somebody in Toronto that could do that for him, and he said he didn't, and he asked me if I did, and I told him I had a cousin who I was sure would be glad to act for him. He asked me if I wouldn't introduce him.

Q. Had you arranged to go up there with Mr. Alprin, Mr. Haas? A. No, when Mr. Alprin told me he was going to Canada to deposit his check, I told him I was going to Canada, too, and I told him when. He flies and I don't. He didn't know for a while whether he wanted to fly up

and meet me there or whether he would take the train. He finally decided to take the train and he came along with me.

Q. When you got there, Mr. Haas, did Mr. Davis introduce Mr. Alprin to the bank officials in your presence? A. I think I introduced Mr. Alprin to the bank officials.

Q. As a matter of fact, you were the one, were you not, who recommended to the bank the opening—you were the reference of Economica Agencias at the bank? A. I was the reference. I didn't recommend [8315] that he go there.

Q. I didn't mean to infer that. Let me call your attention to Government's Exhibit 334 and to a note on that card (handing to witness). The account of Economica was opened through your good offices, was it not? A. That is what this card says, but I am not responsible for that. I introduced Mr. Alprin to Mr. O'Neill of the bank.

Q. Is what that card contains in that Government's Exhibit the truth? A. The account was opened through my good offices?

Q. Yes. A. I wouldn't know how to answer that, Mr. Bauman.

Q. Did you discuss with Mr. Alprin splitting his draft into three different bank accounts, Mr. Haas? A. No, sir. I did not.

Q. When for the first time did you know that Alprin did in fact split the $264,000-draft among three Cuban corporative bank accounts? A. I think it was sometime in 1949.

Q. However, Mr. Alprin did not tell you he was doing that at the time he was there? [8316] A. I have no recollection of his telling me that.

Q. Although in fact he had told you previously that he had a draft for $264,000? A. Yes, sir.

Q. And that he was taking it to Canada pursuant to Mr. Klein's instructions? A. Yes, sir.

Q. That he was going to deposit it in the name of one of his Cuban corporations? A. In the name of the corporation to which it was payable.

Q. And that was Economica Agencias? A. Yes.

Q. You went up to the bank with him, is that right? A. I went to the bank with him.

Q. You introduced him to the bank officials? A. Yes, sir.

Q. He did not tell you at any time that he was going to split that check into three different accounts? A. At that time I have no recollection, I know it now, of course.

Q. When was it for the first time that Mr. Alprin told you about the formation of these Cuban corporations? [8317] I am referring to his Cuban corporations. A. I think about the time he told me about the check, that is, about the draft.

Q. Did he tell you about it in 1946 when he formed them, Mr. Haas? A. I don't think so.

Q. Did he tell it to you within that year, I mean the approximate period of a year between June, 1946 and March, 1947? A. I have no recollection of that.

Q. You testified in response to Mr. Kiendl's question that you did not open any books for La Ribera because you thought it was unnecessary for one transaction, is that right? A. That's right.

Q. At the time you got that check for $35,000 you thought that La Ribera was going to go into business, didn't

you? A. Yes, and as soon as it went into business I would have opened an account.

Q. You have been an accountant how long? A. Since 1916.

The Court: Since 1916, let us get going. Let us take a fifteen-minute recess.

(Short recess.)

* * *

Mr. Bauman: I have just one or two more [8322] questions.

By Mr. Bauman:

Q. Mr. Haas, I believe you said this afternoon that you did not know what Mr. Klein took down as his share of the Harwood deal until 1948 when you prepared the 1947 return; is that right? A. I did not know exactly what he took down, no.

Q. But quite obviously, sir, you knew, did you not, in March, 1947, when you prepared his estimate, that the amount he took down was approximately four times one million two that you reported in his estimate? A. Yes, sir.

Mr. Bauman: That is all.

Cross Examination by Mr. Kiendl:

Q. Mr. Haas, these exhibits, Defendant Alprin's Exhibit FH, consisting in part of the declaration of the estimated tax of Mr. and Mrs. Alprin for the year 1952, was

never filed, was it? A. My understanding was that it was not filed, no, sir.

Q. And it shows, does it not, an estimated tax of $8,100? A. I assume that you are reading it. $8,500.

[8323] Q. $8,500? A. Yes, that is the estimated tax.

Q. The unpaid balance of the estimated tax is $8,100? A. Yes, sir.

Q. And, of course, that did not include any part of this check that we are talking about for $264,000? A. No, sir.

Mr. Kiendl: That is all.

Recross Examination by Mr. Donohue:

Q. You know, do you not, Mr. Haas, that subsequent to the time that this estimated return was prepared by your office, Mr. Alprin procured a release or received permission from Mr. Klein to deposit his check and did deposit his check? A. So he told me.

Q. And you do know, do you not, sir, that subsequent to the deposit of the check, a second estimated return for 1952 was prepared by Mr. Alprin which included the $264,000 draft and that the tax thereon was paid? A. I so understand.

Mr. Donohue: I have no further questions.

Mr. Bauman: I have no further questions, your Honor.

[8324] The Court: All right, thank you, you are excused.

Mr. Kiendl: Wait just a second, Mr. Haas.

The Court: Just a moment.

Mr. Kiendl: Could I have Mr. Donohue's questions read, the last two or three, your Honor?

The Court: Surely. The import of them was that after he learned from Alprin that Klein had released the draft, that Alprin filed either a new or an amended estimate, including the $264,000.

By Mr. Kiendl:

Q. And you learned that from Mr. Alprin not from Mr. Klein? A. Oh, no, not from Mr. Klein.

Mr. Kiendl: That is all I wanted.

The Court: All right.

(Witness excused.)

[8325] Mr. Donohue: May I now call the jury's attention to these two exhibits, your Honor?

The Court: Yes.

(Mr. Donohue read Defendant Alprin's Exhibits FH and FI to the jury.)

Mr. Bender: Defendant Haas rests, your Honor.

* * *

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Mr. Kiendl: That is all I wanted.

The Court: All right.

(Witness excused.)

[8325] Mr. Donohue: May I now call the jury's attention to these two exhibits, your Honor?

The Court: Yes.

(Mr. Donohue read Defendant Alprin's Exhibits FH and FI to the jury.)

Mr. Bender: Defendant Haas rests, your Honor.

* * *

23905

No. 593

FILED
NOV 1 1957

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

HYMAN HARVEY KLEIN, MAURICE HAAS, and MORRIS O. ALPRIN,

Defendants-Appellants.

and

ISIDOR J. KLEIN, ALBERT McLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, IRVING A. KOEBNER and ALBERT ROER,

Defendants.

APPENDIX TO APPELLANTS' BRIEF

Volume IV

(Pages 2215-2367)

UNITED STATES COURT OF APPEALS
FILED
MAR 7 1958
SECOND CIRCUIT

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MORRIS O. ALPRIN, one of the defendants, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Mr. Alprin, you are the same Morris O. Alprin who is a co-defendant in the fifth count of the indictment now in hearing before this Court and jury? A. Yes, sir.

Q. When were you born, Mr. Alprin? A. June 23, 1899.

Q. Where? A. New York City.

Q. Have you lived continuously in New York City and/or Brooklyn since your birth? A. I was born in Manhattan and moved from Manhattan when I was five or six years of age to [8326] Brooklyn.

Q. Have you lived in Brooklyn since you were five or six years of age? A. Yes, sir.

Q. What is your present address in Brooklyn? A. 1350 East 27th Street, Brooklyn.

Q. You live there with whom? A. My wife and son.

Q. How long have you lived in Brooklyn at your present address? A. Since 1933.

Q. Other than your son, do you have any children? A. A married daughter and two grandchildren.

Q. Your married daughter is living where? A. Alexandria, Virginia.

Q. Your son is married or unmarried? A. Unmarried.

Q. How long, Mr. Alprin, have you been a member of the Bar? A. I was admitted in October 1931 to the State Court, New York.

Q. You are then I take it qualified to practice and have been admitted to practice before the Bar of the Supreme Court of this State? [8327] A. Yes, sir.

Q. Are you a member of the Bar of the United States District Court for the Southern District of New York, this court? A. Yes, sir.

Q. When did you become a member of the Bar of this court? A. I forget the month, 1934.

Q. Continuously since your admission to the Bar of the State of New York have you been engaged in the practice of the profession of law? A. Yes, sir.

Q. Where did you obtain your legal training? A. New York Law School, New York City.

Q. Were you graduated from that law school? A. Yes, sir.

Q. Did you receive a degree from that law school? A. Bachelor of Laws.

Q. At the time you were a student at the New York Law School studying for your degree were you occupied otherwise? A. Yes, sir.

Q. What was your occupation at that time? A. I was engaged in a partnership under the name of Horowitz & Alprin, acting as brokers in the sale [8328] of drugstores and the financing of such sales.

Q. Where were you so engaged? A. We had an office in the Tower of the Metropolitan Life Building on 23rd Street, New York City.

Q. Prior to your having engaged in the business of business broker what had been your business or occupation? A. When I graduated high school in 1916 I attended night high school, studying stenography and typewriting, and started as a stenographer when I was graduated for a short time in a mail order house. Then in 1916 to '18, I think, I worked for an import-export firm called Llata, at 30 Wall Street, New York City. I then joined the United

States Army in World War I, at Officers Training School, and was honorably discharged.

In 1919 I entered the employ of the Kentucky Distilleries Warehouse Company, which is now National Distillers, and worked for them until 1925.

In 1926, I was engaged in the real estate in Brooklyn with the late Mr. Arnold D. Agello.

In 1937 I started the partnership of Horowitz & Alprin.

Q. It was during your partnership with the [8329] firm of Horowitz & Alprin that you attended law school? A. Yes.

Q. Are you a member of any organizations, Bar Associations? A. I am a member of the New York State Bar Association, a member of the Section on Antitrust Law, the Section on Food, Drug and Cosmetic Law, under which alcoholic beverages come, member of the American Bar Association Section on Food, Drug and Cosmetic Law, a member of the American Judicature Society.

Q. Have you had any experience in the field or arbitration and do you belong to any organization concerned with that subject? A. I have been a member of the National Panel of the American Arbitration Association since 1942 or thereabouts.

Q. Have you been interested in the work of trade associations, and if so, are you a member of any organization concerned with that subject? A. I have been interested in trade organizations since or immediately prior to repeal in 1933, and I am a member of the American Trade Executives Association.

Q. What has been the nature and extent of your civic or other activities? [8330] A. They have been mostly connected with work in and around the alcoholic beverage industry.

In 1934 I worked with the City officials of the City of New York and Customs officials in order to establish a free port in the City of New York. I have been a member of various committees on civic and communal activities and primarily on many activities in charities in which I have tried to get the industry behind.

Q. Is it true that in large measure wherever there has been organized campaigns to raise funds for religious and charitable purposes that you have represented the liquor industry in the solicitation of those funds? A. I have either represented the industry or a branch of the industry, the wholesale branch, since I am so closely identified with it.

Q. Upon your admission to the Bar in 1931, where did you begin the practice of the law? A. In New York City, Manhattan.

Q. Were you alone or were you in association with someone else? A. I have always been alone.

Q. Did there come a time when in 1933 upon the [8331] repeal of Prohibition you had some concern with a special committee in Washington concerning alcoholic beverage laws? A. Yes, sir.

Q. Would you tell us what that interest was? A. Well, I was co-counsel at the time of the Wine and Spirits Merchants Association in New York of people who had formerly been in the alcoholic beverage industry prior to repeal—prior to prohibition, rather, and was called upon by them, and by government officials with whom I had been working during the summer of 1933, to work with the committee appointed by the President and with a committee of officials for the Interdepartmental Committee of Treasury to prepare regulations and laws in order to set up the industry in anticipation of repeal.

Q. Did the work of that group have something to do with legislation that subsequently created the Federal Alcohol Control Administration? A. It did. We set up the regulations for the Federal Alcohol Control Administration at that time, and also appeared before the A.A.A, the Agriculture Administration, under which alcoholic beverages was considered, and the N.R.A codes were set up at that time.

[8332] Q. Now, was it upon the repeal of prohibition that you became co-counsel for the Wine and Spirits Merchants Association of New York City? A. It was prior to that. The association was organized in anticipation of repeal.

Q. And you served as co-counsel with whom for that Association? A. Mr. Clarence Goldberg, who changed his name to Greer.

Q. How long did you continue, do you recall, with the Wine and Spirits Merchants Association? A. I think that organization lasted for about two years and there was some internal dissension and another association was formed, of which I was counsel.

Q. Was that the National Wholesale Liquor Dealers Association? A. No. The Wine and Spirits Merchants Association was a local association of merchants in New York. The National Wholesale Association was formed on the advent of repeal, just immediately prior to it, and that was an association of wholesalers nationwide. Of that I was associate counsel.

Q. Was the successor organization perhaps the [8333] Council of Wholesale Wine and Spirits Merchants of New York? A. That was the successor to the original Wine and and Spirits Merchants Association.

Q. And you became general counsel for that organization? A. That is correct, sir.

Q. And subsequently was the organization for which you are now general counsel formed, and, if so, what is the name of that organization? A. The Greater New York Wholesale Liquor Dealers Association, Inc. It was formed in 1942, and I have been general counsel of that association from that date to the present date.

Q. You are still counsel for that association? A. Yes, sir.

Q. And without going into any detail, who are the component members of that association; what is the extent of its area of territory? A. They are wholesalers in the metropolitan New York area who sell to retail licensed liquor dealers.

Q. By the way, while it occurs to me, in 1944 was R. C. Williams & Company a member of the association for which you were then and are now counsel? A. Yes, sir, they were.

[8334] Q. You know Mr. Hyman Harvey Klein? A. I do.

Q. Can you tell us when it was that you first met him? A. I think in or about 1935 or 1936.

Q. Was that a professional or purely social meeting? A. It was a social meeting through the good offices of a former client of mine.

Q. And do you recall where it was that you met him on that social occasion? A. New York City.

Q. How frequently from that point on, if you did meet Mr. Klein, socially or otherwise, did you meet him? A. Very infrequently until sometime late in 1942.

Q. Did there come a time in 1942 when you became counsel for Mr. Klein for some purpose? A. Late in 1942

I became counsel, not for Mr. Klein personally, but for the United Distillers of America, Baltimore, a distilling operation, rectifying-distilling operation in Baltimore.

Q. Will you tell us the circumstances under which you became counsel for one of Mr. Klein's companies or Mr. Klein's then company? [8335] A. There was a change in the laws of the State of New York with reference to alcoholic beverages which required an out-of-state supplier to obtain a primary distributing agent in this state who would sell to other wholesalers in this state.

Prior to that an out-of-state supplier, distiller or importer could sell every wholesaler in the state without the necessity of having a license here. That was changed by legislation and it was required that such out-of-state supplier either obtain a license in the state or appoint a wholesaler who would act as its primary distributing agent in the state.

Q. What was the name of Mr. Klein's then company? A. United Distillers of America, Baltimore, Inc., I think, or Limited, I don't know.

Q. You were engaged, I take it, by Mr. Klein to procure the necessary permits required by the amendment you have indicated to the New York State law to allow them to sell to licensed wholesalers in the State of New York? A. Yes. I beg your pardon. May I correct my testimony?

Q. Surely. A. It was not a primary [8336] distributing agent at that time. That occurred later. It was necessary for the out-of-state supplier to obtain negotiator permits in order to negotiate with each wholesaler and it could then at that time in 1942 sell each wholesaler, provided it obtained a negotiator's permit.

The question of primary distributing agents did not occur until early in 1944, January or February, I don't remember.

Q. Now, when you were retained as counsel for the purpose indicated by United Distillers of Baltimore, were you retained by Mr. Klein, himself? A. Yes, sir.

Q. And was it for a single purpose or was it a continuing kind of representation? A. Well, it was a general retainer, originally to take care of these negotiator permits, but as it developed, I was asked questions with reference to registration and so on in this state or other states or nationally with respect to the Alcoholic Tax Unit and so on.

Q. Now from the period in late 1942, when this relationship began, through the calendar year 1943, how often did you have occasion to see or did you [8337] see Mr. Klein? A. I saw him, oh, I wouldn't remember the number of occasions, but I was in Baltimore on several occasions that I can recollect.

Q. Did Mr. Klein on those occasions or during that period of time come to New York City? A. Not very frequently.

Q. And would you say that when you saw him essentially it was in Baltimore? A. I would think so. There were a good deal of telephone conversations, long distance telephone conversations.

Q. Now, did there come a time in the year 1944 when Mr. Klein discussed with you what we have learned here over the past weeks, the so-called Harwood Whiskey deal? A. Yes, sir.

Q. What is your best recollection as to when it was that Mr. Klein first discussed any aspect of that matter

with you? A. I have been trying to go back to find the beginning date. To the best of my recollection it is some time around towards the end, sometime in February, the end of February, March, 1944.

[8338] Mr. Donohue: Heretofore, if it please your Honor, there was marked for identification, the Defendant Alprin's T for identification.

The Court: March 31st, wire from Alprin to Klein, March 31, 1944.

Mr. Donohue: Yes, your Honor.

Q. Would you examine, Mr. Alprin, what has heretofore been marked for identification as the Defendant Alprin's T for identification, and tell me if you can identify it? A. This is an office——

Q. Do not describe it. Do you know what it is? A. Yes. It is an office copy of a telegram sent by me to Mr. Klein——

Q. Just a moment. Don't tell me what it is. You can identify it? A. Yes, sir.

Mr. Donohue: I would like to offer it in evidence.

Mr. Bauman: No objection.

Mr. Kiendl: Defendant Klein has no objection, your Honor.

Mr. Bender: Defendant Haas, your Honor, will object on the ground it is not binding as to [8338a] him.

The Court: Defendant Alprin's T is received, no objection by the Government or the defendant

Klein; the objection by the defendant Haas thereto is overruled.

(Defendant Alprin's Exhibit T for identification received in evidence.)

[8339] Q. Referring now, Mr. Alprin——

The Court: Excuse me, do you have photostatic copies?

Mr. Donohue: Yes, excuse me, your Honor (handing to Court).

Q. Would you examine Defendant Alprin's Exhibit T in evidence and tell me whether it aids refreshing your recollection as to when it was that you first discussed with Mr. Klein the so-called Harwood deal? A. There was a discussion a few days prior to my sending this telegram, in which he just told me about the deal very generally, just that he was negotiating with R. C. Williams.

Q. The date of that telegram is what? A. March 31, 1944.

Q. Thank you.

Mr. Donohue: May I read it to the jury, your Honor?

The Court: Surely.

(Mr. Donohue read Defendant Alprin's Exhibit T to the jury.)

Q. Does that recall by what medium Mr. Klein had communicated to you any information prior to the 31st of

March 1944 concerning the so-called Harwood [8340] deal? A. No, I don't think that that would identify it.

Q. Did you talk to him in Baltimore or on the telephone or was he in New York when you sent the telegram to Baltimore? A. No, I talked to him while he was in New York, and then we discussed it on the telephone a day or two before I sent that telegram.

Q. Does that date of that telegram refresh your recollection as to when it was you first met with anyone in the R. C. Williams Company concerning the so-called Harwood deal? A. Yes, it does.

Q. As taking place when? A. The appointment took place on Monday, following the date of this telegram, which I believe was April the 3rd.

Q. Prior to the conference with someone from R. C. Williams did you pursuant to that telegram have a discussion with Mr. Klein at your office concerning the subject matter of the Harwood deal? A. I think it was either at my office or I think as a result of this I spoke to Mr. Klein, and I met him at the railroad station when he came in from [8341] Baltimore. I cannot recollect which place it was.

Q. Will you very briefly tell us what Mr. Klein told you and what you may have said at that meeting? A. He told me that he and Mr. Koerner had been talking about the possibility of R. C. Williams representing the sale of Harwood as sole importer in the United States, and that in accordance with his telephone conversation with me and my telegram to him the appointment had been set up to meet the principals so they could go over the discussion and try to arrange for a contract.

Q. In that first conversation with Mr. Klein did you know anything about Harwood Whiskey? A. As I say, during the month of February, I knew about Harwood Whiskey.

Q. You knew it was a blended Canadian whiskey? A. So I was told.

Q. Did Mr. Klein tell you what his interest in Harwood blended Canadian whiskey was? A. Not at that time.

Q. When did you first learn what Mr. Klein's interest in Harwood Whiskey was? A. I think it was one or two or three days, a very short time before I sent this telegram of March [8342] 31.

Q. What did you learn then from Mr. Klein was Mr. Klein's interest in Harwood Whiskey? A. That Mr. Klein had an agreement with the producers of that whiskey, Duncan Harwood Company, which was a subsidiary of the United Distillers of Canada, Ltd., and that he had or was turning over this agreement to a Cuban corporation, Distillers Agencies, and that he and his associates had an interest in Distillers Agencies, and that the contract for the importation of Harwood would be on behalf of Distillers Agencies of Cuba.

Q. Up to that time did you know anything about Distillers Agencies, a Cuban corporation? A. The first time I heard of it.

Q. You were not an officer of that corporation? A. Never was.

Q. You had not formed the corporation as counsel? A. No, sir.

Q. Were you not a stockholder or director? A. No, sir.

Q. Of that corporation? A. No, sir.

Q. What did Mr. Klein tell you on the occasion [8343] when you met him in New York subsequent to that telegram? What did Mr. Klein tell you he wanted you to do about it? A. He wanted me to sit in on the negotiations so that I could prepare a contract or supervise a contract, if drawn by the other side, between Distillers Agencies and R. C. Williams.

Q. Such a meeting did take place, did it not? A. It did on April 3.

Q. Where did the meeting take place? A. The first meeting took place at the office of R. C. Williams on Tenth Avenue, in the large office of Mr. Jaburg.

Q. Who was present at that meeting? A. Mr. Jaburg, Mr. Jacobs——

Q. Who, by the way, was Mr. Jaburg? A. Mr. Jaburg was the president, I was told, of R. C. Williams. Mr. Jacobs, its counsel, whom I had known before in working for R. C. Williams, as a client of mine, and also as a member of the Association. Mr. Koerner, who was in charge of its wholesale division, and Mr. Klein and myself.

Mr. Donohue: Would this be a convenient time to adjourn, your Honor?

The Court: Yes. The jury is excused until [8344] 10:30 tomorrow.

* * *

[8352] New York, August 9, 1955.
10:30 o'clock a. m.

Trial resumed.

(Jury in Box.)

Mr. Donohue: May I have your Honor's permission to momentarily withdraw the defendant Alprin as a witness and call a gentleman from the bank?

The Court: Surely.

Mr. Donohue: Mr. McKennan.

ROBERT MCKENNAN, called as a witness on behalf of defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Where do you live, Mr. McKennan? A. I live in Elmhurst, New York.

Q. What is your business or occupation? A. I am a banker.

Q. With what institution are you connected? [8353] A. The Sterling National Bank and the Sterling Safe Deposit Company.

Q. With respect to those institutions, what is your official title? A. As to the bank I am assistant cashier, and as to the safe deposit company I am assistant secretary.

Q. Pursuant to a subpoena, have you brought with you a record or records from the Sterling Trust Company? A. Sterling Safe Deposit Company.

Q. Yes. A. Yes, I have.

Q. May I see it, please? A. Yes (handing to Mr. Donohue).

Mr. Donohue: May I ask this be marked Defendant Alprin exhibit for identification next in sequence.

(Marked Defendant Alprin's Exhibit FJ for identification.)

By Mr. Donohue:

Q. What is this which you now hold in your hands (handing to witness)? A. This is a safe deposit record or contract card.

[8354] Q. Duly kept in the files of the institution by which you are employed? A. Yes.

Mr. Donohue: I offer it in evidence, if your Honor pleases.

Mr. Bauman: The Government has no objection, your Honor.

Mr. Kiendl: We have no objection.

If your Honor please, may we reverse our position and object to the exhibit only in so far as it is not binding on the defendant Klein.

Mr. Bender: No objection, your Honor.

The Court: Defendant Alprin FJ is received without objection by the Government or the defendant Haas, and the objection of the defendant Klein is sustained.

(Defendant Alprin Exhibit FJ received in evidence.)

[8355] Q. Mr. McKennan, I hand you what has been marked the Defendant Alprin's in evidence FJ and ask you if you can tell us from that which you have in your hand was a safe deposit box rented in the institution by which you are employed and does that card so indicate? A. Yes, it does.

Q. Does the card indicate when the safe deposit box was rented? A. Yes.

Q. What was the date, sir? A. December 12-December 22nd, 1950.

Q. And does the card indicate when the safe deposit box was surrendered? A. Yes, it does.

Q. And what date was it surrendered, sir? A. March 11, 1952.

Q. Does the card indicate by whom the box was rented and if so by whom was it rented? A. It was rented by four people: Maurice Haas, Julius Schlesinger, George M. Glassgold and Herman Schrier.

Q. Was the rental fee paid for the use of the box; does the card so show? A. Yes, at the time of rental.

[8356] Q. Now may I ask you, Mr. McKennan, if in addition to the card the bank kept any separate file of correspondence which may have resulted either prior to or subsequent to the opening of that box? A. Well, if there was any correspondence it would have been kept.

Q. Did you make a search for such correspondence? A. I did in the current files at the office where the vault is located and was unable to find any.

Q. If there were correspondence not kept in the current file where would it be? A. Possibly into our storage vault or archives.

Q. Are you able to tell us how long normally you would keep such correspondence in your current files before sending it to the archives or warehouse? A. Well, the records are kept practically indefinitely.

Q. Kept where indefinitely, sir? A. In the archives.

Q. What I am asking is if you can tell us the normal practice in your institution as to the amount of time or length of time you would have kept correspondence in the bank prior to sending it to the warehouse. [8357] A. That would depend upon the accumulation of the amount of it.

Q. Are you able to give any estimate of the normal period of time? A. I would say possibly in the neighborhood of five years.

Mr. Donohue: I have no further questions, your Honor.

Mr. Bauman: I have no questions, your Honor.

Mr. Kiendl: We have no questions.

Mr. Donohue: If it pleases your Honor, Mr. McKennan has assured me that we will have a photostat of this card before the day is over. May he take the card back with him and we will substitute a photostat?

The Court: Yes, surely.

Mr. Donohue: Thank you, Mr. McKennan.

(Witness excused.)

Mr. Bauman: Did you want to read from that card at all before?

Mr. Donohue: Let me see it, if I may.

May I have your Honor's permission merely to call the attention of the jury to what this exhibit is?

[8358] The Court: Yes.

(Mr. Donohue read from Defendant Alprin's Exhibit FJ to the jury.)

Mr. Donohue: Mr. Alprin, will you take the stand again, please.

MORRIS O. ALPRIN resumed.

Direct Examination Continued by Mr. Donohue:

Q. Mr. Alprin, we had reached the point yesterday wherein you had testified, as I recall, that on the 3rd day of April 1944 you participated in a conference in the office of Mr. Jaburg or Mr. Jacobs, did you say? A. The office of Mr. Jaburg.

Q. In the office of Mr. Jaburg, president of R. C. Williams & Company, at which conference there was present Mr. Jaburg, Mr. Jacobs, Mr. Koerner, Mr. H. H. Klein and yourself, am I correct in summarizing your testimony? A. That's correct.

Q. Will you briefly tell us what occurred at that conference? A. There was a general discussion with reference to the agency of R. C. Williams in the distribution of Harwood in the United States, and the terms and conditions of that agency.

Q. May I ask you if at the time you attended that conference you had with you any document by way of a proposed contract of agreement? A. I had my scratch sheet of information given to me by Mr. Klein as to the suggested terms and conditions of the agency.

Q. Do you know where and when before the 3rd of April you had prepared the scratch sheet? A. That was immediately prior to the conference.

Q. Where was it prepared? A. As I said yesterday, I don't remember whether it was at the railroad station, when Mr. Klein came in, [8360] or in my office before we went to R. C. Williams.

Q. Are you able to tell us the general nature of the information you had received from Mr. Klein and which you subsequently wrote on this scratch sheet? A. I tried to follow the general terms of any contract between a supplier and an agent. One would be the names of the parties, and I had those. Mr. Klein gave me the name of the principal.

Q. What was the name of the principal as given you by Mr. Klein at that time? A. Agencias Destiladores, the English name being Distillers Agencies.

Q. Had you known of that corporation prior to this meeting with Mr. Klein? A. No, sir, I had not.

Q. Following the meeting of April 3rd, what, if anything, did you do concerning the contract between Agencias Destiladores and R. C. Williams & Company? A. As a result of the discussions on April 3rd, I prepared a first draft of a contract on the following day at my office and mailed copies of that draft to Mr. Jacobs, the attorney for R. C. Williams, and to Mr. Klein.

[8361] Q. Do you recall when it was that you mailed the copy of the first draft of the contract which you prepared? A. The following day, which would be April 4th.

Q. I hand you what has heretofore been introduced as Government's 2B in evidence and ask you if you can identify it (handing to witness)? A. That is first draft of the contract that I prepared on April 4th.

Q. And which you submitted to whom? A. To both Mr. Jacobs and to Mr. Klein.

Q. Was Mr. Klein in New York at the time you submitted a copy of what you now have in your hand? A. No, sir. I mailed it to him in Baltimore.

Q. Following the mailing of copies of Exhibit 2B, was there a further conference with respect to the subject matter of that draft? A. Yes, sir, there was.

Q. When and where, if you can tell us? A. There was a conference on Friday of that same week, which I think was April 7th.

Q. Where was that conference held? A. I think that conference was held at Mr. Jacobs' [8362] office.

Who was present? A. Mr. Jacobs, the late Mr. Mengebier, who was an officer of R. C. Williams, Mr Koerner, Mr. Rudin, the comptroller, Mr. Klein and myself.

Q. At that meeting were you acting as counsel in the preparation of this contract for Agencias Destiladores and/or Mr. Klein? A. I was counsel for Agencias Destiladores, not for Mr. Klein personally.

Q. What role did Mr. Jacobs play in these conferences? A. He was acting as counsel for R. C. Williams.

Q. At the conference in Mr. Jacobs' office, was there a discussion of the draft which you prepared and which you now have in your hand, Government's 2B? A. Yes.

Q. Was there any conclusion reached with respect thereto? A. There was no definite conclusion, except in the course of the discussion and going over paragraph by paragraph of the draft of agreement, discussion was had with reference to those paragraphs and as a result of that some changes were made in it.

[8363] Q. Was a second draft of the proposed agreement prepared? A. Yes, sir.

Q. By whom was it prepared? A. By me.

Q. I hand you what has heretofore been introduced as Government's 2A in evidence and ask you to examine it and tell us if you can identify it as being what (handing to witness)? A. This is the second draft of the agreement prepared as a result of the discussion on this first draft.

Q. Do you recall when it appeared in its present form, how long after the meeting of the 7th of April? A. Either that day or Saturday or Monday, I don't remember.

Q. Without going into the detail, can you tell us substantially the difference between the first draft of the contract, Exhibit 2B, and the second draft, 2A? A. I can't without looking at them.

Q. Do I understand that 2A was the result of the conference concerning 2B and reflected the changes that both parties indicated they wanted made in the contract and translated by you into writing and represented by Exhibit 2A? [8364] A. Yes, with one exception, and that was that some of the matters that were in both drafts were still subject to discussion, and Mr. Jaburg wanted to discuss them still further with his principals.

Q. What did you do with Exhibit 2A when you prepared it? A. I believe I sent a copy to Mr. Jacobs and Mr. Klein.

Q. Was there a further meeting by the parties with respect to Exhibit 2A and a discussion concerning that document? A. I have no recollection of a further meeting between the principals. I have a recollection of meetings and telephone conversations between Mr. Jacobs and me and Mr. Klein and me.

Q. I hand you what has heretofore been introduced into evidence as Government's Exhibit 3 and ask you if you can identify it (handing to witness)? A. Yes, I can.

Q. That is a letter dated April 4th, the date on which you say the first conference was held, and directed to whom? A. This letter was sent by me on my letterhead to Jules Jacobs.

Q. The substance of the letter or the purpose [8365] of the letter was what? A. Enclosing the first draft of the agreement which I prepared and that I forwarded a copy to Mr. Klein for his comments and Mr. Klein was expected back in New York on Thursday of the week and we could possibly arrange to have a further conference that week in order to conclude the agreement.

Q. Does that refresh your recollection that you were referring to 2B as the first draft you prepared? A. That's correct.

Q. Did you have any discussion with Mr. Jacobs concerning the second draft you had prepared, Exhibit 2A? A. We had several discussions.

Q. But there was no formal meeting, I am to understand, between the principals, only conferences between

counsel, concerning Exhibit 2A? A. I have no recollection of any further meeting between the principals.

Q. Did you keep Mr. Klein informed as to the progress of the discussions had by yourself with Mr. Jacobs? A. I did.

Q. In consequence of the discussions between yourself, as counsel for Agencias, and Jules Jacobs, [8366] as counsel for R. C. Williams, was a determination reached? A. Yes, the final draft of contract was prepared by Mr. Jacobs in accordance with our understanding.

Q. I hand you what has heretofore been introduced in evidence as Government's Exhibit 4 and ask you if that is the final draft of agreement prepared by Mr. Jules Jacobs? A. Yes, sir, it is.

Q. It bears what date, Mr. Alprin? A. April 18, 1944.

Q. Do you know—— A. Excuse me, Mr. Donohue.

Q. Yes. A. The agreement is dated on the first line as a memorandum of agreement made this 18th day of April, 1944. However, it shows a signature by R. C. Williams on April 18th, and a signature by Agencias Destiladores in Havana, Cuba, on May 8, 1944.

Q. Does that refresh your recollection, the date of its execution by R. C. Williams, as April 18th, as the time when you first received from Mr. Jacobs a copy of the final draft which he had prepared? [8367] A. We had some discussions up to the 20th about some additions that he wanted, and there was no agreement until the 20th with reference to those discussions. They concerned the supplemental agreement.

Q. Did you approve that final draft as prepared by Mr. Jacobs, and I mean did you approve it for your client,

Agencias Destiladores? A. I did, with the approval of Mr. Klein.

Q. Do you recall when it was with Mr. Klein's approval you indicated to Mr. Jacobs the final draft, Government's Exhibit 4, was acceptable to your client? A. At or about the 18th day of April.

Q. Sometime prior, I take it, to the execution of that agreement by R. C. Williams & Company? A. That's correct.

Q. At the time you voiced your client's approval of the final draft of agreement as prepared by Mr. Jacobs, was there an accord between the parties to that agreement upon all phases of the subject matter? A. No, sir.

[8368] Q. With respect to what areas had an accord not been reached? A. Well, there had been no accord reached with respect to the profit or the payments of commissions to the salesmen of R. C. Williams. There had been no accord reached with reference to the approval by Agencias of the wholesalers to whom it would sell or the quantities that it would sell them. There was no accord reached with reference to the 25 per cent that R. C. Williams wanted to take for itself in the State of New York and the metropolitan area of New York, and as later developed, there was no accord with reference to the place of payment.

Q. Now had those matters been the subject of discussion at either of the, if I may characterize them as formal meetings which were attended by the principals on both sides which you have heretofore testified about? A. They were the subject of discussion at both conferences.

Q. Was there ever a determination reached as to what would be done with respect to those matters that were so

described by you? A. Well, at the second conference, in the course [8369] of general discussion, in order to get on with the proceedings and try to get the contract consummated as quickly as possible, Mr. Jacobs said that he would take up with his principals those questions and prepare them in a supplemental agreement, that is, a part of this agreement, but separate from it.

Q. Now, I hand you what has heretofore been introduced in evidence as the Defendant Alprin's Exhibit S and ask you if you can identify it as being what. A. This is a letter from Jules Jacobs to me dated April 13, 1944.

Q. And the subject matter of the letter? A. It enclosed a proposed form of letter to supplement the agreement and advised me to advise him with respect to it.

Q. I hand you a paper writing and ask you if you can identify it. A. Yes, I can.

Q. As being what? A. This is a copy of the letter supplement which was attached to Mr. Jacobs' letter of April 13th, the original of which I forwarded to Mr. Klein and I had a copy typed for my office.

[8370] Q. Can you tell us whose handwriting appears on that paper writing? A. That is my handwriting.

Mr. Donohue: Would you mark this, please, the Defendant Alprin's for identification FK.

(Marked Defendant Alprin's Exhibit FK for identification.)

Mr. Donohue: May I hand your Honor a copy.

The Court: Thank you.

Mr. Donohue: I now offer the Defendant Alprin's FK for identification in evidence, your Honor.

Mr. Bauman: No objection, your Honor.

Mr. Kiendl: We have no objection.

Mr. Bender: This goes in as background, your Honor, so I might just as well not object.

(Defendant Alprin's Exhibit FK for identification received in evidence.)

Mr. Donohue: May I read it to the jury, your Honor?

The Court: Surely.

(Mr. Donohue read Defendant Alprin's Exhibit FK to the jury.)

By Mr. Donohue:

Q. This being contained, as you have testified, [8371] Mr. Alprin, by way of attachment to a letter dated April 13th, addressed to you here in New York from Mr. Jacobs in New York, can you tell us when it was that you received that letter. A. I have no date stamp on it. I presume I received it the next day.

Q. What did you do with respect to the subject matter of the enclosure? A. I forwarded the copy contained in Mr. Jacobs' letter directly to Mr. Klein and discussed it with him on the telephone.

Q. Did you have any further discussion with respect to the subject matter contained in that copy with Mr. Jacobs? A. I had several.

Q. I hand you what has heretofore been received in evidence as the Defendant Alprin's R for identification and ask you if you can identify it. A. Yes, I can.

Q. As being what? A. It is a copy of a letter from R. C. Williams to the Agencias Destiladores dated April the 18th with reference to the supplemental agreement.

[8372] Q. And the letter was signed by whom, if it appears? A. It is not signed.

Q. Typed signature? A. No typed signature. This is possibly another draft.

Q. Well, will you examine it and see if it is another draft with respect to the same subject matter of the draft we have just read to the jury dated April 13th? A. I think this is just a formalized copy of the proposal.

Q. Would you make a quick examination of the proposed draft dated April 18th with that dated April 13th to determine if you find any distinction or difference between them? A. Well, there is no substantial difference—there is no difference in the first three paragraphs. The difference is that it is formalized by the last paragraph asking that a duplicate original be signed——

By the Court:

Q. Mr. Alprin, what about the pencil interlineations on Defendant Alprin's FK as distinguished from Defendant Alprin's R?

[8373] Mr. Donohue: I was just going to ask him that.

Q. Doesn't it contain typewritten matter appearing in Defendant Alprin's FK prior to the pencil corrections? A. I don't quite understand your question, your Honor.

Q. Well, Defendant Alprin's FK for example, on the first line has struck out the word "made" and substituted in

pencil the word "dated." Do you see that? A. Yes. Defendant's R does not make that correction.

Q. Precisely. And on the first line of the second numbered paragraph the word "in". A. The correction is still not made.

Q. All right. And in the third paragraph, after the words "90 days" is there any insertion in Defendant Alprin's R of the phrase "over $200,000 revolving 1/c"? A. No, sir, there is not. I was comparing the typewritten portions of both.

The Court: Is that the difference you wanted to point up?

[8374] Mr. Donohue: Yes, your Honor.

By Mr. Donohue:

Q. I wanted to ask, Mr. Alprin, having made three pencil suggested changes in the draft which you received dated April 13th were any of those changes incorporated in the draft of April 18th which was sent by R. C. Williams & Company to Agencias Destiladores for signature and approval? A. There is an assumption in your question which is not correct.

Mr. Donohue: May I withdraw the question.

Q. Let me ask you again if the three pencil notations on the Defendant Alprin's FK in evidence were made by you? A. That is correct, sir.

Q. And may I ask you if any one of those suggested changes contained in the pencil notations by you were adopted in the draft dated April 18th and forwarded by

Agencias Destiladores? A. The changes were not adopted in the draft, but that draft was not sent to Agencias Destiladores. It was sent to me.

[8375] Q. I see. Though it was addressed to Agencias Destiladores at 411 Aguiar Street, Havana, Cuba, in fact it was sent to you? A. That's correct.

Q. Subsequent to the receipt of that draft dated April 18th, did you receive a further draft of the proposed supplemental agreement, and, if so, from whom did you receive it and when, and I ask you to look at Government's Exhibit No. 5 in evidence and ask you if that refreshes your recollection? A. I did not receive the draft or a copy of it until after the agreement was signed. However, Mr. Jacobs discussed it with me on the telephone.

Q. From whom did you ultimately receive a copy of that draft? A. From Mr. Jacobs.

Q. What is the date of that draft? A. April 20, 1944.

Q. Can you tell us how long subsequent to the 20th of April it was that you received the draft? A. I cannot. It was subsequent to the signing of the agreement.

Q. You indicated that you had——

The Court: I beg your pardon. May [8376] I interrupt?

Mr. Donohue: I am happy for your interruption, your Honor.

The Court: In view of the witness' testimony that he did not get Government's 5 until after April 20th, it really is a contract as distinguished from a draft. The use of the terminology "draft" has built up in my mind and, I am sure, in the jury's mind something preparatory to a contract.

Mr. Donohue: I am grateful to your Honor for calling my attention to it.

By Mr. Donohue:

Q. May I ask you if Government's 5, which you have in your hand, dated April 20th, is not a supplemental agreement which subsequently was executed by Agencias Destiladores, your client, and R. C. Williams, the client of Mr. Jules Jacobs? A. It is.

Q. And you received it—that is dated April 20th—sometime subsequent thereto? A. That's correct.

Q. However, you have indicated to us that you had discussed the subject matter of that supplemental agreement, executed by the parties to it, with [8377] Mr. Jacobs prior to the 20th of April, 1944? A. That's correct.

Q. May I ask you now again to compare Government's 5, the final executed supplemental agreement, with the draft of April 18th, and indicate to us, if you can, what the difference is between them (handing to witness)? A. The first difference is that Government's 5 has the date 18 included, which was not in the draft, Exhibit R.

Government's 5 has two paragraphs added to it which did not appear in the draft, Defendant Alprin's Exhibit R, paragraphs 4 and 5.

Q. What, briefly, is the subject matter of paragraph 4 and of paragraph 5? A. Paragraph 4 refers to the revolving letter of credit about which I had made a notation on the first draft I received, and paragraph 5 calls for all payments of merchandise to be made in the City of New York.

Q. In between the receipt by you of the draft dated April 18th and the final executed supplemental agreement

dated April 20th, were the subject matters of paragraphs 4 and 5 discussed by you with anyone? [8378] A. Discussed by me with Mr. Jacobs and then I discussed them with Mr. Klein.

Q. Did your client voice any objection to the suggestions contained in paragraphs 4 and 5 of Government's 5? A. No, sir, he did not.

Q. Am I correct in saying that the only one of the three penciled suggestions of change made by you in the draft dated April 13th was with respect to the revolving letter of credit as expressed in paragraph 4 of the final agreement? A. That was a change in substance. The other I think was just a change in language.

The Court: Let the record show that the draft that counsel referred to as having been dated April 13th is intended to be defendant Alprin's FK, because technically it is not dated. It accompanied a letter dated April 13th.

Mr. Donohue: Thank you, your Honor.

By Mr. Donohue:

Q. Each of these documents, the draft of the proposed supplemental agreement, which accompanied the letter to you from Jules Jacobs dated April 13th, and the draft in the form of a letter addressed to Agencias [8379] Destiladores and dated April 18th, which, however, was received by you, and the final supplemental agreement, containing five paragraphs as opposed to three in the earlier two, dated April 20th, were all prepared by Mr. Jules Jacobs? A. Yes, sir, except that the first one, the copy attached to Mr. Jacobs' letter of April 13th is my copy of Mr. Jacobs' draft.

Q. But the subject matter from which you copied it, made the copy, was a draft prepared by Mr. Jules Jacobs? A. That's correct.

Q. I take it, however, that with respect to the supplemental agreement dated April 20th your client fully concurred in the subject matter as indicated by the ultimate signature of Agencias Destiladore to that agreement? A. Yes, sir, they did.

Q. And Mr. Jacobs' client, R. C. Williams Company, fully concurred as attested by their signature to that agreement? A. Yes, sir.

Q. Was there any purpose in the execution of the supplemental agreement and its separation from [8380] the contract itself to hide, secret, or conceal any of the information which was contained in either or both of those documents? A. No, sir, by no means.

Q. I take it that under the laws of the State of New York what we have referred to as the contract in contradistinction to the supplemental agreement is not required by law to be filed with any public office in the State of New York, where it may be on inspection observed by any interested party A. The laws do not require it.

Q. I take it that the supplemental agreement dated April 20th, in writing, was as available, if available, for inspection as was the original contract executed the same date, though dated two days prior thereto? A. Yes, sir, it was available in my office, it was available in Mr. Jacobs' office, I presume, it was available at either R. C. Williams' or Agencias Destiladores' offices.

Q. Both of these agreements which constituted the entire understanding between R. C. Williams and Agencias

Destiladores were implemented over a period of two and a half or three years in what we have [8381] heard for so long described as the Harwood deal? A. Yes, sir.

Q. Will you tell us, Mr. Alprin, what was the reason for the separation of the contract into the contract and the supplemental agreement? A. It is not unusual in any——

Q. First tell us what the reason was in this case. A. The only reason was in so far as the basic agreement, if you can call it that, was concerned, the parties were all in agreement. As far as the supplemental agreement, they were still the subject of discussion.

Q. For that reason the one was prepared prior to the other? A. Yes.

Q. And both executed at the same time? A. That's correct.

Q. There came a time, did there not, Mr. Alprin in the course of the negotiations which we have been going through beginning with the 4th of April and up to the 20th of April, when you obtained a tax opinion from Maurice Haas; correct? A. Yes, sir.

[8382] Q. I hand you Government's 8 in evidence, which I think you will recognize as the opinion of Mr. Haas (handing to witness). A. Opinion of Mr. Haas on the letterhead of his firm, Haas, Schlesinger & Mayers.

Q. Will you tell us when it was that you first discussed with Mr. Haas an opinion taxwise with respect to the subject matter of this contract? A. It was immediately after our second conference, the conference of the parties, on April 7th.

Q. After the conference of April 7th? A. That's correct.

Q. Will you tell us the circumstances, what was said by whom and to whom concerning Government's 8 in evidence? A. Between whom, Mr. Donohue?

Q. That is what I want to know, Mr. Alprin. A. I will give to you chronologically, if I can.

At our conference on April 7th, Mr. Klein asked what was my opinion with respect to the tax aspects and the subject of tax liability of Agencias Destiladores. I told him that I was not a tax man, I had enough difficulty keeping up with liquor [8383] regulations; that whenever I had a tax problem I always submitted it to tax experts, as I had in other deals.

He said he had a tax opinion, but he wanted my opinion. I said I couldn't give it. However, I said I know a firm, I know a member of the firm, and I know the members of the firm of accountants and tax people that I would be glad to recommend to him. He said it might be a good idea to get their opinion, and "you should get it."

I then discussed it with Mr. Haas.

Q. Can you fix with some degree of accuracy the date on which you discussed with Mr. Haas an opinion taxwise on the subject matter of the Agencias-R. C. Williams contract? A. I can't fix the exact date, but it was shortly after the discussion and meeting of April 7th.

Q. It was after April 7th and obviously prior to the date of the opinion which is dated the 17th of April? A. Oh, yes.

Q. At the time you discussed the subject matter of the tax opinion with Mr. Haas, what did you give Mr. Haas as the basis for his opinion? [8384] A. I believe I discussed it with him on the telephone, and as a result of that

conversation, which I think was the following Monday, but I can't be sure, I forwarded to him a copy of the draft of the agreement.

Q. The agreement at that time obviously had not been signed? A. Oh, no, it had not been signed.

Q. When you say you think the following Monday, I am sure it means no more to the Court and jury than it does to me. You mean, the Monday following the 7th? A. Yes, the 7th being on a Friday.

Q. Would that be Monday, the 10th? A. Yes.

Q. Did you take the agreement to Mr. Haas, do you recall, or did you send it to him? A. I believe I mailed it to him.

Q. May I ask you, Mr. Alprin, if as of the 10th there had been any draft of any supplemental agreement prepared by Mr. Jacobs? A. No, sir.

Q. May I ask you, Mr. Alprin, as a result of nearly a quarter of century experience, essentially [8385] with respect to firms and individuals who are engaged in the distribution of alcoholic beverages, if it was a matter of usual custom for you with respect to a contract potentially the subject matter of substantial amounts of money to advise your client or clients to seek tax advice in order that he may mitigate in so far as the law allows the burden of taxation? A. If I recognize any problem of taxes, I would point it out to the client and would suggest he take it up with his tax people or he get tax people to pass on it. I wouldn't pass on a tax matter. I am not qualified.

Q. In your many years of experience in the preparation of business contracts, have you heretofore advised a client or clients to seek tax advice with respect to the most effec-

tive way of drawing a business contract so as to avoid, in so far as one may properly and legally, the burden of taxation? A. I have never given such advice. I leave that to the accountants whose business it is.

Q. I asked if you referred clients to attorneys for tax advice? A. Oh, yes, I have.

Q. Your recollection is on the 10th of April, 1944, [8386] having sought tax counsel for your client, concerning the tax implications of the contract between Agencias Destiladores and R. C. Williams, you forwarded a copy of the then agreement; am I correct? A. Yes, sir. I think I forwarded to Mr. Haas a copy of Exhibit 2B, the second draft.

Q. I was just about to ask you that.

The Court: Just a minute. Will you read Mr. Alprin's answer back.

(Answer read.)

The Court: Is Exhibit 2B the second draft?

The Witness: No, 2A.

Mr. Donohue: I wish I had your Honor's memory.

The Court: With that, we will take a 15-minute recess.

(Short recess.)

[8387] Q. Now, Government's 8, Mr. Alprin, which is the tax opinion requested by you of Mr. Haas, is dated April 17th. Can you tell us when it was that you received it? A. I received it on that same day by hand.

Q. And what if anything did you do with respect to it? A. Well, I went over to Mr. Jacobs and showed it to him and discussed it with him.

Q. Did Mr. Jacobs raise any question about the soundness of the opinion? A. No, sir, he did not.

Q. Did you communicate anything with respect to that opinion to your client, Agencias Destiladores, or to Mr. Klein personally? A. I mailed a copy of it—I believe I received several copies from Mr. Haas and I mailed a copy or the original to Mr. Klein.

Q. Was there any reason why subsequent to the 17th of April, when you received the tax opinion from Mr. Haas, that the supplemental agreement dated the 20th of April was not submitted to Mr. Haas by either you or by Mr. Jacobs? A. Yes, there was a reason.

[8388] Q. What was the reason, Mr. Alprin? A. On reading the opinion and discussing with Mr. Jacobs the basis of the entire opinion was founded on the place of sale, which was f. o. b. Vancouver, and the supplemental agreement had nothing to do with any change that would affect the place of sale.

Q. Was there any purpose or reason of secretion or evasion in the failure to submit to Mr. Haas for opinion the subject matter of the supplemental agreement or the supplemental agreement itself? A. None at all.

Q. Now there has been introduced in evidence Government's No. 254, which I ask you to examine and see if you can identify them. A. They are copies or originals of my letters to various people.

Q. Well, let's begin at the top. First is a letter dated April 19th? A. First is a copy of a letter dated April 19, 1944, from me to Mr. Klein in Baltimore.

Q. And the second? A. The second is a copy of a letter from me to Mr. Klein in Baltimore dated April 17, 1944. The third is a photostat of an original of my letter [8389] to Mr. Hill, dated May 6, 1954, and a photostat of the envelope from me to Mr. Hill.

Q. Now, does the date of your letter to Mr. Hill of May 6, 1954, refresh your recollection to the time or to a time when you had a discussion with Mr. Hill, and if so, when was that discussion with reference to the date of May 6, 1954? A. I think it was on May 6, 1954, that I had the discussion with Mr. Hill. When I came back to my office I sent him that letter.

Q. At that time, May 6, 1954, Mr. Hill was an assistant United States attorney in this district and in this courthouse? A. I was so informed.

[8390] Q. And at that time you were aware that Mr. Hill was presenting evidence with respect to these transactions to a grand jury ? A. Yes, sir.

Q. And at that time did you have a discussion with Mr. Hill? A. Yes, sir.

Q. How did Mr. Hill learn that you had on April 17th and on April 19th sent a letter to Mr. Klein in Baltimore? A. I told him.

Q. And after you told him that you had sent these letters, did he make any request of you? A. He asked if I would send a copy to him and I said I would and did.

Q. That day? A. Yes, sir.

Q. I notice on the first sheet of the letter of April 19th a handwritten notation on the side. In whose handwriting is that? A. That is my handwriting.

Q. And it says what? A. "4/21 Approved by H. H. Phoned Jacobs to mail contracts to Cuba."

[8391] Q. Does that refresh your recollection as to the date upon which either the supplemental agreement or what we have heretofore termed the original contract was signed? A. It does refresh my recollection.

Q. To what end? A. I sent Mr. Klein my letter of April 19th, telling him that Mr. Jacobs was sending to Mr. Klein a copy of the agreement, the supplemental agreement and the order for 100,000 cases, which I asked Mr. Klein to read carefully and telephone me with respect to any comments or suggestions that he might have.

Mr. Jacobs mailed to Mr. Klein those documents. The supplemental agreement had added to the paragraphs 4 and 5, which I had been discusing with Mr. Jacobs and with Mr. Klein. Mr. Klein had not seen the wording of it, neither had I, we discussed it on the telephone, and Mr. Klein, in my conversation with him on April 21st, approved the wording of paragraphs 4 and 5 and the other paragraphs in the supplemental agreement and I notified Jacobs to that end so he could send the contracts prepared by him to Agencias Destiladores in Havana, Cuba.

Q. I call your attention to Government's 6 in [8392] evidence and ask you if that is the letter to which you made reference a moment ago of transmittal of the documents to Agencias Destiladores? A. I presume it is. I never saw that.

Q. That is what? A. That is a letter from R. C. Williams to Agencias Destiladores dated April 20, 1944, enclosing various documents: the agreement, the main agreement, the supplemental agreements and the letter order for 100,000 cases.

Q. That is dated what date? A. April 20, 1944.

Q. Subsequent, Mr. Alprin, to the execution of the contract and the supplemental agreement by Mr. Jacobs' client, R. C. Williams Company, and your client, Agencias Destiladores, did you, following thereafter, in the calendar year 1944, perform any legal services for R. C. Williams or Agencias or both? A. I did.

Q. Can you without any detail give us generally the nature of the services which you performed in the calendar year 1944? A. The question of Custom House entries of the [8393] merchandise of Harwood, sometime around July or August, 1944; my going to Cuba in 1944 at the request of Mr. Klein—I shouldn't say I went to Cuba at the request of Mr. Klein, but while in Cuba he asked me to check into the question of the purchase or building of a distillery for alcohol and gin in Cuba, and other services in connection with the contract, I don't remember offhand.

Q. May I ask you, in the light of your present recollection, whether you performed many services arising out of the shipment of what became substantial amounts of Harwood blended whiskey and other whiskeys from Canada to the United States during the year 1944? A. Yes, sir, I did.

Q. At the end of the calendar year 1944, did you submit a bill for your services, and in what amount? A. I submitted a bill for $37,500 with the approval of Mr. Klein.

Q. Had you discussed the amount of the fee with Mr. Klein before you submitted your bill? A. Yes, sir. As a matter of fact, he suggested the amount to me.

[8394] Q. The bill was paid, I take it, and, if so, when? A. Paid the early part or sometime in January, 1945, and deposited by me.

Q. So that your services were completely compensated for during the calendar year 1944? A. Yes, sir, they were.

Q. I hand you what had been heretofore introduced in evidence as Government's 9, 10 and 11, and ask you if you will first read them (handing to witness). A. Yes, sir.

Q. Do those documents refresh your recollection as to any conversation you may have had with Mr. Klein concerning payment to you for legal services in 1945 and the years subsequent thereto? A. Yes, sir, it does.

Q. Will you tell us your best recollection of what the conversation was, where it took place and when it was? A. The conversation took place in my office the latter part of the middle of December, 1944, between me and Mr. Klein. I told Mr. Klein that although I was retained by Agencias in the preparation [8395] of the contract, there were problems coming up with reference to the contract that inured to the benefit of R. C. Williams as well as Agencias.

Mr. Klein suggested that I take up with R. C. Williams the question of compensation for those services and made the suggestion that since they were selling to retailers of metropolitan New York City and that on such sales they were making a profit of about $8 a case, they were not paying a brokerage or commission to any agent, since that account was not assigned to anybody, that I should at least get the 60 cents that any agent or broker would get on such sales by R. C. Williams to retailers in metropolitan New York City.

Q. Was an understanding reached in consequence of which you were expected to do something? A. Yes, sir.

Q. What was the understanding and what did you do pursuant thereto? You understand I am referring to Mr. Klein. Did you reach an understanding with Mr. Klein and, pursuant to that understanding, did you do anything about it? A. There was no understanding with Mr. Klein, except I said I will follow through and take it up with [8396] R. C. Williams. I did take it up with R. C. Williams by discussing it with Mr. Koerner, who stated to me that he had to take it up with Mr. Jacobs and then suggested that I take it up with Mr. Jacobs, which I did. As a result of that there was an understanding that R. C. Williams would pay me 60 cents per case on all those cases sold to retailers, and that that 60 cents was the measure of my fee.

Mr. Bauman: I apologize for interrupting, Mr. Donohue, but I wonder if I can impose on the Court to approach the bench with counsel.

The Court: Surely.

(Discussion at the bench off the record.)

The Court: There will be a 10-minute recess.

(Short recess.)

[8397] (The following proceedings were had in the absence of the jury.)

The Court: Would you advise me as to the number of the Alprin affidavit that was stricken?

Mr. Bender: 357.

The Court: 357?

Mr. Bauman: Yes, that's correct, your Honor.

The Court: Let the record show that immediately prior to the recess just taken the United States

Attorney requested a conference at the bench, which was had.

He requested an indication from the Court as to the extent the Court would permit cross-examination of the witness Alprin as to matters that occurred at the conference in December, 1944 at which Alprin testified he advised the defendant Klein that R. C. Williams was the beneficiary of some of the services that he was rendering, and that the defendant Klein suggested that Alprin be compensated by R. C. Williams on the basis of a commission of 60 cents per case on the liquor being sold by R. C. Williams through its wholesale division to retailers in the metropolitan area inasmuch as no commission on that merchandise was being paid to any broker or salesman.

The United States Attorney further indicated [8398] that he wanted the Court's statement as to how far he would be permitted to interrogate the witness Alprin as to what the witness Alprin ultimately did with the money that he received from R. C. Williams pursuant to an arrangement ultimately worked out between Alprin and R. C. Williams along the lines of Alprin's discussion with Klein; i.e., that Alprin be compensated for his services to R. C. Williams at the rate of 60 cents per case on the wholesale sales to retailers in the metropolitan area.

Alprin's counsel indicated that he objected to any cross-examination beyond that elicited on direct, not only as to the conversation between Alprin and

Klein in question which the witness testified was held December 1944, but also as to subsequent events and disposition of any commissions or fees received by Alprin.

Counsel for the other defendants join vigorously in their objection to the Court permitting the United States Attorney to explore the area indicated, both as to the conference and as to subsequent disposition of the commissions, indicating that in their view such testimony would not be within the purview of the fifth count and would be highly prejudicial and inflammatory, particularly in view of the fact that the witness is an attorney.

[8399] The Court was of the opinion that a portion of the conversation between Alprin and Klein having been elicited by Alprin's counsel on direct, that the Government was permitted to elicit the balance of that conversation.

Alprin's counsel then pointed out that he had been very circumspect in the extent of his examination of his client, the witness Alprin, as to that conversation because of what had been done by the Court previously with respect to Government's Exhibit 357.

Government's Exhibit 357 came into evidence at page 4493 of the stenographers minutes during the testimony of the witness Evelyn Grumet who, strangely enough, never testified. She was sworn, and when it appeared on page 4492 that the purpose of her being called was to identify the signature of the defendant Alprin on Government's 357, defend-

ant Alprin, through his counsel, stated, "We are glad to concede that this is the signature of Morris O. Alprin sworn to on the date that appears and have no objection to its introduction in evidence."

Government's 357 was then received over the objection of the defendant Alprin, but the objection of all remaining defendants then in the case was sustained, so that 357 was received at that time merely on the basis of the acknowledgment that it was signed and sworn to by [8400] Alprin.

Subsequently, when the Court ruled on motions for directed judgments of acquittal and granted those motions as to the first four counts, Government's 357, standing as it did at that time, without any testimony or proof as to its background or genesis, was stricken.

It is now the position of defendant Alprin and the other defendants that it having been stricken it would be highly improper for the Government to be permitted to explore the circumstances recited in Government's 357.

The Court is of the opinion that the situation now posed is entirely different from that which brought about the striking of Government's 357 at the end of the Government's case. The Court is of the opinion, first, that the defendant Alprin, having initiated the testimony with respect to his conference with defendant Klein in December of 1944 and the arrangement that resulted therefrom, which is touched upon by Government's Exhibits 9, 10 and 11, must be subjected to cross-examination as to

the entire conversation at that time in December, 1944, between Defendant Alprin and defendant Klein, and the defendants are deemed to have appropriately objected thereto and their objections overruled unless—well, I will that. I see that Commissioner Donohue is rising and it [8400-A] may very well be that in view of the Court's expression of its feeling about the matter he may bring that out on direct. I don't know.

[8401] Mr. Donohue: I only wanted to invite your Honor's attention to the trap in which I find myself, since your Honor has ruled that the defendant may be cross-examined about the balance of the conversation which I thought I rather artistically avoided. I am now in the position of having Mr. Alprin testify that certain payments——

The Court: Let me finish my statement, Mr. Donohue. I had indicated before I left the bench that I was disposed to permit the interrogation by the Government on what actually happened to the money as distinguished from the conversation. Of course, I have no means of knowing and I don't think it would make any difference whether it was part of that conversation that Alprin had agreed with Klein that he would disport himself as indicated by Government's Exhibit 357.

On reflection, however, I am disposed to withdraw from my position with respect to eliciting proof of what disposition was made of the funds. I hope I make myself clear.

Mr. Donohue: Yes, your Honor, except Mr. Alprin must of necessity testify that he agreed and in fact paid certain moneys to Mr. Klein, and [8402] we are denied the proof now that they were in fact paid because Kirby and Kirby have been eliminated.

The Court: I don't see that. You couple agreement to pay and payment, I don't. The only basis upon which I was disposed before I left the bench to admit exploration beyond the conference of December 1944 was on the theory that it might serve as background material and indicate the relationship of the parties, but that is in great measure a discretionary matter with the trial judge as to how far he will go. As I heretofore indicated, if it is outweighed in its materiality or its value as proof by unwarranted prejudice, it can be excluded.

Therefore, I say that although I expressed to you at the side bar off the record the notion that I would permit the Government to explore beyond the conference as to what actually was done on the basis of so-called background, I now am of the opinion and I am now stating it on the record that while I think the door has been opened to a full cross-examination as to the conference of December 1944, I withdraw from the position that I will permit the Government to explore what actually took place subsequent to that conference, because I am persuaded [8403] that that would be highly prejudicial, particularly in view of the fact that these payments assume the aspect of legal fees, and

this defendant particularly and those sharing with him by direction or indirection in those fees might be highly prejudiced in the jury's eyes on the innuendo that he split fees with a layman.

Mr. Donohue: I understand that now, your Honor.

The Court: While the arrangement was nominally that of fees, I can recognize from having been a practicing lawyer before I went on the bench that there are situations of a hybrid nature, and I think because of this witness's character as counsel for the Wholesalers Association and so forth and his association in one way or another with both of the parties involved, that it would be highly prejudicial and would be beyond the scope of background material that I think as a matter of discretion and a matter of fairness and necessity should be allowed in. In order to resolve it, gentlemen, I will permit on the basis of that which has already been elicited on direct of Alprin cross-examination as to any untestified to portion [8404] of the conference, but I will not permit any exploration by the Government as to what the parties subsequently may or may not have done as might be indicated by Government's Exhibit 357.

Mr. Donohue: If your Honor gives me half a minute, I hope to eliminate any reason for cross-examination at all.

The Court: All right.

Mr. Donohue: I am ready, your Honor.

The Court: Do any of counsel wish to make any statement on the record to preserve whatever rights they feel they should preserve in view of the Court's pronouncement of what it proposes to do?

Mr. Kiendl: I think your Honor has adequately protected all of the rights of the defendant Klein.

Mr. Bender: I too so state on behalf of the defendant Haas, your Honor.

Mr. Bauman: In view of your Honor's statement, I should like to say that when the defendant Alprin opened, my recollection is that Mr. Donohue said that Alprin received legal fees from R. C. Williams of some amount in the thirty thousands

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Mr. Donohue: $36,000.

[8405] Mr. Bauman: Thank you, $36,000. Would the Government in your Honor's view in the light of that statement made on the opening by the defendant permit—would that affect your Honor's judgment as to the exploration of the difference between the $36,000 Mr. Donohue said the defendant Alprin was paid and the amount of money in Salvatore's testimony which it indicates he was paid?

The Court: $44,000, representing the difference of $8,000, which is the amount set forth in Government's Exhibit 357.

Mr. Bauman: I ask merely would the fact that the opening stated that affect your Honor's judgment on the second part of the ruling?

The Court: No, sir. I think it would be a very specious distinction and would permit by indirection to do that which I think you may not do directly.

Mr. Bauman: I did not mean to do it, your Honor.

The Court: I am explaining to you why I would not permit it.

Mr. Bender: In view of your question of defense counsel whether we had anything more to [8406] state on the record, I should like to say that the objections that you deemed noted in your statement before encompassed your previous indication to us at the bench——

The Court: You are not going to object to my excluding——

Mr. Bender: No, but I likewise object to just the limited way in which you permit exploration.

The Court: I would suggest, in order that the record be crystal clear, that when the questions are addressed to the witness in cross-examination the Government may abandon any notion now in view of my ruling of inquiring into the balance of the conversation, or it may be brought out on further direct examination of Alprin. However, in any event, I want the record to be clear that the Court contemplated that there be saved to every defendant every right to object to what the Court is permitting in the examination of the defendant Alprin as the examination may unfold.

Mr. Bender: As I understand now, your Honor has allowed the defendant an objection at this mo-

ment with regard to any cross the Government might seek to engage in?

[8407] The Court: That is a little bit irregular. I did indicate that, but it would seem the better course would be for the parties at some stage when that area is approached in cross-examination to preserve their rights de novo on the record.

Mr. Bender: Very well, your Honor.

The Court: Bring the jury in, please.

(Jury present.)

The Court: Proceed.

By Mr. Donohue:

Q. Mr. Alprin, we were discussing a conversation between you and Mr. Klein in mid-December, you described it, of 1944. Have you exhausted all of your recollection as to the entire conversation with Mr. Klein? A. When Mr. Klein suggested that to me, I told him if I got it I would give him a third of it.

Q. You were referring to the compensation——

Mr. Kiendl: May we object to that question and move to strike the answer as not binding on the defendant Klein, as not within the purview of the background material.

Mr. Bender: The defendant Haas likewise [8408] joins in that motion.

The Court: The motions are denied. The objection is overruled and the answer is not stricken.

Q. Did there come a time, Mr. Alprin, in the succeeding year 1945 when you met Mr. I. J. Klein? A. Yes, sir, I did.

Q. Can you tell us approximately when and under what circumstance it was? A. It was some time in the month of June 1945. I think he was visiting his brother, Mr. H. H. Klein.

Q. Were you both in company with Mr. H. H. Klein and Mr. I. J. Klein during that visit in New York? A. Yes, sir.

Q. Did anything occur as a result of your conferences or your meeting with Mr. I. J. Klein and Mr. H. H. Klein? A. Yes, sir.

Q. Will you tell us what it was? A. They invited my wife and me to come up to Vancouver to inspect the plant and some new additions that had been built, telling us to come up some time in July when Mr. I. J. would be back at the plant, as a result of which we did go up there.

[8409] Q. There has been heretofore received in evidence Defendant Alprin's Exhibit FB. Would you read it, please, and tell me if it refreshes your recollection as to the time when you went to Canada with your wife (handing to witness). A. Yes, according to this letter we were up in Canada on July 20, 1945.

Q. May I hand you what has heretofore been received as Defendant Alprin's Exhibit FC for identification, only with respect to the first paragraph, and tell us if it refreshes your recollection as to who other than yourself and your wife were in Canada at the same time? A. This refreshes my recollection that Mr. Silvers and Mr. Rosenberg were in Vancouver at the same time. I do know also that Mr.

and Mrs. Koerner and Mr. and Mrs. Roer were in Vancouver at the same time, also Mr. and Mrs. H. H. Klein and Mr. I. J. Klein.

[8410] Q. While in Canada at that time did you meet Mr. McLennan? A. Yes, sir, I did.

Q. Did you meet Mr. Norgan? A. I don't believe I did.

Q. How long did you remain in Vancouver at that time? A. I think it was a little over two weeks, two weeks and a week-end.

Q. I hand you a paper writing and ask you if you can identify it as being what? A. This is a copy of a telegram from Mr. Friedman of my office to me in Vancouver.

Q. And was that received by you during the period of time we are now discussing, when you were in Vancouver? A. The original of that was received by me on July 24, 1945, while I was in Vancouver.

Mr. Donohue: Would you mark that for identification, please.

If it pleases your Honor, the carbon copy is so poor it could not possibly be photostated. I have taken the liberty of preparing a ribbon copy.

The Court: That is quite all right, surely. Thank you.

(Marked Defendant Alprin's Exhibit FL for [8411] identification.)

Mr. Donohue: Which I now offer in evidence, your Honor.

Mr. Kiendl: The defendant Klein will object to it as wholly immaterial to anything under the fifth count.

Mr. Bauman: May I see the one that has been marked?

No objection, your Honor.

Mr. Bender: Defendant Haas, your Honor, will object on the ground that it is not binding as to him and I call your Honor's attention to Alprin's FB and FC which were letters to Vancouver which were likewise not admitted as to defendant Haas.

The Court: What was the witness' testimony, July 24th?

Mr. Donohue: Yes, your Honor.

The Court: 1945?

Mr. Donohue: Yes.

The Court: The exhibit is received without objection by the Government. The objections of the defendants Klein and Haas thereto is sustained.

(Defendant Alprin's Exhibit FL for identification received in evidence.)

[8412] Mr. Donohue: May I read it to the jury, if it please your Honor?

The Court: Surely.

(Mr. Donohue read Defendant Alprin's Exhibit FL to the jury.)

By Mr. Donohue:

Q. Who was Samuel Friedman or who is Samuel Friedman? A. Samuel Friedman was an associate in my office and still is.

Q. And who is "Moncker" referred to in this telegram? A. Moncka is Lawrence Moncka, who at that time was head of the OPA, Alcoholic Beverages Section.

Q. Does the receipt of this telegram refresh your recollection as to the subject matter of the conversation you had while in Vancouver in 1945 with Mr. H. H. Klein? A. It does.

Q. Will you tell the Court and jury your best recollection of the entire conversation? A. When I received that telegram I showed it to Mr. H. H. Klein, and during that day or that evening Mr. I. J. Klein joined us and the three of us discussed it. We discussed the import of the action or the proposed action by the OPA on the supplies of the [8413] industry, prices of the industry, trends of the industry and so on; what effect it would have and the possibility, with decontrol—as it appeared that the war was ending, or so the general thought was—of the extension of markets for Harwood throughout the world; also the possibility of shipping Harwoood Gin into the United States and whether or not by reason of OPA action OPA prices would be relieved and the possibility of such shipments.

Mr. Bender: Your Honor, at this time may I note my objection and move to strike out his testimony at least so far as defendant Haas is concerned?

The Court: Granted.

A. (Continuing) Particularly Mr. I. J. Klein and H. H. Klein wanted to expand their markets throughout the world, more or less emulate Hiram Walker in the distribution of their alcoholic beverages worldwide, particularly Harwood.

Q. Now did there come a time subsequent to this conversation re the subject matter of the telegram that you had a further conversation with Mr. H. H. Klein? A. There did.

Q. When in relation to the conversation you have just narrated and where did that conversation take place? [8414] A. As to when——

Mr. Bender: Same objection, your Honor.

The Court: Sustained.

A. It was a few days after the discussion with Mr. H. H. Klein and I. J. Klein; and where, in the lobby of the Vancouver Hotel, Vancouver.

Q. And will you tell us what Mr. Klein said to you, Mr. H. H. Klein, and what you said in return, in so far as you can remember? A. Well, we were in the lobby of the hotel waiting for the rest of the party to come down for dinner, and Mr. Klein and I were alone. Mr. Klein told me that I had been conscientious and loyal, that I represented the United Distillers of Baltimore for some time when they were not making money, and now that the Harwood operation was making money that Mr. I. J. Klein and Mr. McLennan liked me and wanted me to be a member of the family, as he put it, and that they would give me an opportunity to get into the Harwood picture and make an investment in one of the companies, and I would be able to make some money out of it.

Q. Now, on your return to New York, following your visit to Vancouver, did you make any inquiry concerning Harwood in foreign markets? [8415] A. I believe I communicated with R. C. Williams to determine whether

or not they had made any shipments anywhere outside of the United States, particularly through ship stores or through the grocery department which handled ship stores.

Q. I hand you a paper writing and ask you if you can identify it? A. Yes, I can.

Mr. Donohue: May I hand one to your Honor?

The Court: Thank you.

Mr. Donohue: Would you mark this the Defendant Alprin's next-in-sequence for identification.

(Marked Defendant Alprin's Exhibit FM for identification.)

Mr. Donohue: Which I now offer in evidence, your Honor.

Mr. Bauman: No objection.

Mr. Kiendl: Defendant Klein objects to it as wholly immaterial under the fifth count.

Mr. Bender: Defendant Haas will object on the ground that it is not binding as to him, your Honor.

The Court: Defendant Alprin's FM is received without objection by the Government, the objections of the defendants Klein and Haas thereto being sustained.

[8416] (Defendant Alprin's Exhibit FM for identification received in evidence.)

Mr. Donohue: May I read it to the jury, your Honor?

The Court: Will you please.

(Mr. Donohue read Defendant Alprin's Exhibit FM to the jury.)

The Court: I think we will suspend now for lunch until 2.15.

(Recess to 2.15 p. m.)

AFTERNOON SESSION—2.15 P.M.

[8417] (Jury in box.)

Mr. Donohue: May I have your Honor's permission to withdraw the defendant Alprin for the purpose of calling character testimony?

The Court: Surely.

Mr. Donohue: Mr. Joseph Kaitz.

JOSEPH KAITZ, called as a witness on behalf of defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. May I ask you, Mr. Kaitz, if you are not here pursuant to a subpoena which was served on you yesterday? A. Yes, sir, I am.

Q. Where do you live, Mr. Kaitz? A. 329 West Broadway, Cedarhurst, Long Island.

Q. What is your business occupation or profession? A. I am the Director of the Enforcement and Investigation Section of the Waterfront Commission of New York Harbor.

Q. Were you at one time connected with the Crime Commission? A. Yes, sir, I was.

Q. What was your connection with that organization? [8418] A. Chief investigator.

Joseph Kaitz—By Defendant—Cross

Q. Were you at one time connected with the State Liquor Authority? A. I was.

Q. In what position were you so connected with the State Liquor Authority? A. I was a Deputy Commissioner.

Q. For what period of time were you Deputy Commissioner? A. From about February, 1946, to July, 1950.

Q. Do you know the defendant Morris O. Alprin? A. Yes, sir, I do.

Q. How long have you known him? A. I know him from early 1946 to the present time.

Q. Do you know other people in this community who also know Morris Alprin? A. Yes, sir, I do.

Q. Do you know what Morris Alprin's reputation is among the people in this community whom you know who also know him for peace, good order and for his propensity for law observance? A. Yes, sir, I do.

Q. What is that reputation? A. It is very good.

Mr. Donohue: You may have the witness.

[8419] Mr. Bauman: Would the Court give me just one moment?

The Court: Yes.

Cross-examination by Mr. Bauman:

Q. Do I understand, Mr. Kaitz, that you were in charge of the Wholesale Division of the State Liquor Authority? A. I was.

Q. And it was in that connection that you first met Mr. Alprin? A. Yes.

Q. And you have known him since? A. That's correct.

Mr. Bauman: I have no further questions.

The Court: I take it there are no questions from the other defendants?

Mr. Bender: Defendant Haas has no questions.

Mr. Kiendl: We have nothing.

The Court: You may step down.

(Witness excused.)

Mr. Donohue: I will call Julia Weller.

JULIA WELLER, called as a witness on behalf of defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Is it true, Mrs. Weller, that you are here without [8420] subpoena. A. Yes, sir.

Q. Where do you live, Mrs. Weller? A. 8675 Midland Parkway, Jamaica Estates, Long Island.

Q. What is your business, profession or occupation? A. I am in Public Relations, Schenley Industries.

Q. Were you at one time connected with an organization which I have known as the WAABIS? A. That's right, sir.

Q. Will you tell us what the WAABIS is. A. The Women's Association of Allied Beverage Industries is a national organization of industry women.

Q. You were at one time the national president of that organization? A. National president.

Q. Do you know the defendant Morris O. Alprin? A. I do.

Q. How long have you known him? A. Almost twenty years.

Q. Do you know other people in this community who also know Morris Alprin? A. I do.

Q. Do you know what Morris Alprin's reputation is among the people in this community whom you know [8421] who also know him for truth, veracity, honesty, integrity and for observance of law? A. Yes, sir.

Q. What is that reputation? A. It is very good.

Mr. Donohue: You may have the witness.

Mr. Bauman: I have no questions, your Honor.

Mr. Bender: No questions.

The Court: Thank you, you may step down.

(Witness excused.)

[8422] Mr. Donohue: Mr. Robert J. Crews.

ROBERT J. CREWS, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Is it true, Mr. Crews, that you are here voluntarily and without subpoena? A. Yes.

Q. Where do you live, Mr. Crews? A. 345 Clinton Avenue, Brooklyn.

Q. And what is your business or occupation or profession? A. A Deputy Commissioner of Records, City Court, City of New York.

Q. Were you at one time a clerk to Justice Arkwright? A. Yes, I was.

Q. And were you at one time an Assemblyman of the State of New York? A. For 11 years.

Q. Were you, while a member of the State Assembly, a member of the Excise Committee? A. I was.

Q. Did Mr. Alprin appear on frequent or few occasions before that Committee? A. He did.

[8423] Q. Do you know the defendant Morris O. Alprin? A. I do.

Q. Do you know other people in this community who also know him? A. I do.

Q. Do you know what Mr. Alprin's reputation is among the people in this community whom you know who also know him? A. Very good.

Q. May I ask you if you know his reputation for trut' veracity, honesty, integrity and for observance of law? A. Yes, I do.

Q. What is that reputation? A. Very good.

Mr. Donohue: You may have the witness.

Cross Examination by Mr. Bauman:

Q. Have you ever discussed his reputation with anybody, Mr. Crews? A. Discussed his with anybody?

Q. Yes. A. Yes.

Mr. Bauman: I see. I have no further questions.

[8424] Mr. Donohue: Thank you, Mr. Crews.

(Witness excused.)

Mr. Donohue: Mr. John Morahan.

JOHN M. MORAHAN, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Is it a fact, Mr. Morahan, that you are here voluntarily and without subpoena? A. Yes, sir.

Q. Where do you live, Mr. Morahan? A. 654 Doremus Avenue, Glen Rock, New Jersey.

Q. What is your business or occupation? A. Newspaper reporter for the New York Herald Tribune.

Q. Do you write a particular column or are you concerned with a particular activity with the Herald Tribune? A. I cover the liquor industry among others for the New York Herald Tribune; have since I have been there.

Q. Do you know the defendant Morris O. Alprin? A. Very well.

Q. How long have you known him? [8425] A. I would say 15, 16 years, possibly longer.

Q. Do you know other people in this community who also know Morris Alprin? A. Yes, sir.

Q. Do you know what among the people in this community, whom you know, who also know Morris Alprin, his reputation is for truth, veracity, honesty, integrity and for observance of law? A. Very good; excellent; and as a matter of fact one of the best.

Mr. Donohue: Thank you, sir. You may have the witness.

Mr. Bauman: I have no questions.

The Court: Thank you.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Donohue: Mr. Patrick J. Gleason.

Mr. Bauman: Will the Court assume I have no questions of these character witnesses unless I rise at the conclusion of Mr. Donohue's examination?

The Court: Surely.

PATRICK J. GLEASON, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

[8426] *Direct examination by Mr. Donohue*:

Q. Mr. Gleason, is it a fact that you are here voluntarily and without service of subpoena? A. Yes, sir.

Q. Where do you live, Mr. Gleason? A. 71 West 9th Street, Huntington, Long Island.

Q. What is your present business, occupation or profession? A. Liquor editor of the Journal of Commerce.

Q. Were you at one time connected with the State Liquor Authority in the State of New York? A. Yes, sir.

Q. In what capacity, sir? A. Deputy Commissioner.

Q. And during what period of time were you Deputy Commissioner of the State Liquor Commission? A. From '52 to '55.

Q. Do you know the defendant Morris O. Alprin? A. Yes, sir.

Q. How long have you known him? A. For eight or nine years.

Q. Do you know other people in this community who also know Morris Alprin? [8427] A. Yes, sir.

Q. Do you know what is Morris Alprin's reputation among the people in this community whom you know who also know him for truth, veracity, honesty, integrity and for law observance? A. The very best, sir.

Mr. Donohue: You may have the witness.

Cross examination by Mr. Bauman:

Q. Mr. Gleason, before you became a Deputy Commissioner of the State Liquor Authority, you were employed by the State Liquor Authority in another capacity, is that right? A. That's right, sir.

Q. And it was in that other capacity——

Mr. Bauman: Withdrawn.

Q. What was that capacity, Mr. Gleason? A. Well, I first served as a publicity agent for the State, and then I served as executive assistant to the Chairman of the Board.

Q. And when was it you said that you met Mr. Alprin for the first time? A. In either '46 or '47, shortly after I came with the Authority.

Q. It was in connection with your work at the [8428] Authority that you first met Mr. Alprin, is that right? A. Yes, sir.

Mr. Bauman: Thank you. That is all.

(Witness excused.)

Mr. Donohue: Mr. Joseph McGraw.

JOSEPH J. McGRAW, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Is it a fact, Mr. McGraw, that you are here voluntarily and without service of subpoena? A. Yes, sir.

Q. Where do you live, sir? A. 340 Lawrence Avenue, Bogota, New Jersey.

Q. And what is your business, profession or occupation? A. I am a department manager for Dun & Bradstreet.

Q. Are you in some way associated with the Liquormen's Credit Association? A. I am secretary of that group, sir.

Q. And how long have you been secretary? A. Since 1946.

Q. Do you know the defendant Morris O. Alprin? A. Yes, sir.

[8429] Q. How long have you known him? A. 1946.

Q. Do you know other people in this community who also know him? A. Yes, sir.

Q. And do you know what Mr. Alprin's reputation is among the people in this community whom you know who also know him for truth, veracity, honesty, integrity and for law observance? A. Very good.

Mr. Donohue: Thank you, sir. You may have the witness.

(Witness excused.)

Mr. Donohue: Mr. Joseph Ringwalt.

Joseph Garneau Ringwalt—By Defendant—Direct

JOSEPH GARNEAU RINGWALT, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

Direct examination by Mr. Donohue:

Q. Mr. Ringwalt, are you, too, here without service of subpoena? A. I am.

Q. Where do you live, Mr. Ringwalt? A. 293 North Broadway, Yonkers.

Q. And what is your business, profession or [8430] occupation? A. I am chairman of the board of the Joseph Garneau Company, importers of wines and liquors.

Q. Do you hold any office with the National Association of Alcoholic Beverage Importers? A. I am president.

Q. Do you hold any position with the L. B. I., the Licensed Beverage Industries? A. I am chairman of the board.

Q. Were you at one time president of the New York Association of Importers and Distillers? A. No.

Q. Were you a member of that organization, sir? A. I am a director and member.

Q. I beg your pardon, sir? A. Director and member.

Q. Do you know the defendant Morris O. Alprin? A. I do.

Q. How long have you known him? A. Twenty years or more.

Q. Do you know other people in this community who also know him? A. I do.

Q. Do you know what Morris Alprin's reputation [8431] is among the people in this community whom you

now who also know him for truth, veracity, honesty, integrity and for observance of law? A. I do.

Q. What is that reputation? A. I'd say excellent.

Mr. Donohue: You may have the witness.

Thank you, sir.

The Court: Thank you.

(Witness excused.)

Mr. Donohue: Carolyn Redell.

CAROLYN REDELL, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. May I ask is it Miss or Mrs.? A. Mrs.

Q. Mrs. Redell, you are here voluntarily and without the service of subpoena? A. I am.

Q. And where do you live? A. 140 West 79th Street, New York City.

Q. What is your business or occupation? A. I own a retail package store in New York [8431a] City.

Q. And how long have you owned a retail package store? A. 21 years.

[8432] Q. Do you hold a position with the Metropolitan Package Liquor Store Association? A. Yes, I do. I am secretary.

Q. You are also a member, I take it, of the Women's Allied Beverage Industries? A. I am.

Q. Do you know the defendant Morris O. Alprin? A. I do.

Q. How long have you known him? A. Since 1937.

Q. Do you know other people in this community who also know Morris Alprin? A. I do.

Q. Do you know what Morris Alprin's reputation is among members of this community whom you know who also know him for truth, veracity, honesty, integrity and for law observance? A. Yes.

Q. What is that reputation? A. Of the very highest.

Mr. Donohue: You may have the witness.

Mr. Bauman: I have nothing.

Mr. Donohue: Thank you.

(Witness excused.)

Mr. Donohue: Mr. Munson.

JOHN MUNSON, called as a witness on behalf of defendant Alprin, being first duly sworn, testified as follows:

Direct examination by Mr. Donohue:

Q. Are you, too, here voluntarily without service of subpoena? A. Yes, sir.

Q. Where do you live? A. 274 First Avenue, New York City.

Q. What is your business or occupation? A. I am assistant metropolitan sales manager for Schieffelin.

Q. Schieffelin & Company are in what business? A. Liquor importers.

Q. How long have you been with Schieffelin & Company? A. Nine years.

Q. Do you know the defendant Morris O. Alprin? A. Yes, sir.

Q. You were at one time commander of his Legion post, were you not? A. Yes, sir, of which he was the founder.

Q. How long have you known Morris Alprin? A. Nine years.

[8434] Q. Do you know other people in this community who also know Morris Alprin? A. Yes, sir.

Q. Do you know what Mr. Alprin's reputation is among the members of this community whom you know who also know him for truth, veracity, honesty, integrity and for observance of law? A. Excellent.

Mr. Donohue: Thank you.

You may have the witness.

Mr. Bauman: I have nothing.

Mr. Donohue: Thank you, Mr. Munson.

(Witness excused.)

Mr. Donohue: Mr. Donovan.

THOMAS J. DONOVAN, called as a witness on behalf of defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue.

Q. Are you, too, here voluntarily and without service of a subpoena, Mr. Donovan? A. I am, yes, sir.

Q. Where do you live? A. 226 Green Avenue, Sayville, Long Island.

Q. What is your business, profession or occupa- [8435] tion? A. I am a lawyer, and I am vice president and executive director of Licensed Beverage Industries.

Q. Do you know the defendant Morris O. Alprin? A. I do, yes, sir.

Q. Do you know other people in this community who also know him? A. I do.

Q. How long have you known Morris Alprin? A. Fourteen or 15 years.

Q. Do you know what Morris Alprin's reputation is among the members of this community whom you know who also know him for truth, veracity, honesty, integrity and for observance of law? A. He enjoys a very excellent reputation.

Mr. Donohue: You may have the witness.

Mr. Bauman: I have nothing.

(Witness excused.)

Mr. Donohue: Mr. Hartley Barclay.

HARTLEY W. BARCLAY, called as a witness by defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Are you here, too, voluntarily without subpoena? [8436] A. Yes.

Q. Where do you live? A. King Street, Port Chester, New York.

Q. What is your business, occupation or profession? A. Industrial advertising manager of The New York Times.

Q. Were you at one time with the Liquor Department of The New York Times; that is, the News Department of The New York Times? A. I was with the News Department of The New York Times, and among my subjects in

which I was considered especially competent was the field of liquor.

Q. Were you at one time the editor of the Wine and Liquor News? Perhaps you can tell me the title. A. I was the editorial director of a publication known as Bownes Wines and Spirits Circular, which was one of the principal national business papers in the wines and spirits industry.

Q. How long have you been with The New York Times? A. Nine and a half years.

Q. Do you know the defendant Morris O. Alprin? A. Yes.

[8437] Q. How long have you known him? A. I have known Mr. Alprin 22 years.

Q. Do you know other people in this community who also know Morris Alprin? A. Yes.

Q. Do you know what Morris Alprin's reputation is among the people of this community whom you know who also know him for truth, veracity, honesty, integrity and for law observance? A. I would say that his reputation is of the very highest.

Mr. Donohue: Thank you.

Mr. Bauman: No questions.

(Witness excused.)

ILDENFONSA M. BOMBA, called as a witness by defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Where do you live? A. 9 Foxhurst Lane, Manhasset, Long Island.

Q. Are you, too, here voluntarily and without service of subpoena? A. I am.

Q. What is your business, occupation or profession? [8438] A. Vice president and director of Schieffelin & Company, importers of wines and spirits.

Q. Were you at one time an officer of the New York Importers Association? A. Yes, I was president.

Q. Were you at one time, and perhaps still, a member of the National Importers Association? A. Yes, I am a director.

Q. Were you at one time employed by the Alcoholic Tax Unit of the Treasury Department? A. Yes. It was the Bureau of Internal Revenue, Alcohol Tax Unit.

Q. How long were you in the Alcohol Tax Unit? A. Ten years, 12 years.

Q. Do you know the defendant Morris O. Alprin? A. Yes, I do.

Q. How long have you known him? A. Around 30 years, I guess.

Q. Do you know other people in this community who also know Morris Alprin? A. I do.

Q. Do you know what Mr. Alprin's reputation is among the people of this community whom you know who also know him for truth, veracity, honesty, integrity [8439] and for observance of law? A. Yes, sir, it is excellent.

Mr. Bauman: No questions, your Honor.

(Witness excused.)

Mr. Donohue: That concludes our character evidence at this time and we are grateful to your Honor for this opportunity to present it.

The Court: All right. Proceed.

MORRIS O. ALPRIN, resumed.

Direct Examination Continued by Mr. Donohue:

Q. Mr. Alprin, following your return to New York after your visit in the summer of 1945 to Vancouver, did you again have any discussion with Mr. H. H. Klein concerning the matter of your becoming, as you put it this morning, a member of the family? A. Yes, sir, I did.

Q. Where and when did that discussion take place? A. In my office on October 3, 1945.

Q. How do you fix the date as being October 3, 1945? A. That is the date I gave Mr. Klein my check for $500 to the order of Tivoli Trading Company.

Q. Will you tell the Court and jury as best you can recall the substance, if you cannot recall the de- [8440] tail, of the conversation between you and Mr. Klein in your office on October 3, 1945? A. I can give you the substance. Mr. Klein came to my office and reminded me of the conversation we had in Vancouver the previous summer—that summer, rather, and told me that he and his associates had arranged that I could become a member of the family and have an interest in the companies in the Harwood picture and for me to make out my check for $500 to the order of Tivoli Trading Company.

Q. Did you make out the check? A. I instructed my secretary to make out the check, I signed it and gave it to him. I told him that I was pleased to be a member of the family and would try to justify his faith in me.

Q. Was anything said, Mr. Alprin, at the time you are now discussing concerning the issuance of certificates of stock in the company to whose order you had prepared a

check? A. No, in that conversation he said, "I will hold the stock in escrow." He didn't say how much stock.

Q. At that time you had full confidence and trust in Mr. Klein? [8441] A. I certainly did.

Q. You raised no question about his statement that he would hold such stock as may be yours in escrow for you? A. No question. The amount was a small one; the client was a big one.

Q. In the year following 1946, can you fix a time when you had a discussion with Mr. H. H. Klein in his office in Baltimore with respect to the general subject of Cuban corporations? A. Yes, sir.

Q. Will you tell us first when, to your best recollection, did such a conversation take place? A. It was about the middle of May, 1946.

Q. Do you have some method of fixing the time as being the middle of May, 1946? A. Yes, sir, I have.

Q. How do you fix the date? A. It was at that time that the Collector of Customs had previously detained 23 carloads of Harwood by virtue of a circular letter that they had sent out to all the collectors of internal revenue. I was engaged in having those cars released and correcting that circular letter, which was an error on the part [8442] of Customs. That took place during the months of April and May, 1946.

On the occasion of my last conference with the officials of the Alcohol Tax Unit and the Collector of Customs, the matter was finally cleared and when the last circular letter was issued by the Collector of Customs, I was in Baltimore with Mr. Klein, reporting to him.

Q. Is it generally true that you have fixed the date of this meeting in Baltimore with Mr. Klein by reference to your files with respect to the other matters concerning which you testified? A. Yes, sir.

Q. Will you tell the Court and jury who was present at Mr. Klein's office and all that transpired as best you can recall it? A. Present when I came into Mr. Klein's office on that occasion were Mr. Jaburg, Mr. Jacobs, Mr. Koerner and Mr. Klein.

Q. Was there a discussion in progress or in process among such persons as you have named at the time you joined them? A. Yes, sir, there was.

Q. What was the subject matter under discussion? [8443] A. The discussion was around the subject of the impending end of either OPA or of OPA control over alcoholic beverages since it was deemed a luxury item.

Q. Do you recall what may have been said on that subject by Mr. H. H. Klein? A. I don't remember the discussion of anyone particularly except a general discussion with reference to the impending end of OPA, which would result in a termination of the agreement originally entered into by R. C. Williams and Agencias and a discussion with reference to a continuation of that agreement.

Q. Subsequent to that discussion, did you have a further conversation with Mr. Klein? A. May I add, Mr. Donohue, at that conference I also told all those present what had transpired in my meetings the day before and that day both in Baltimore and Washington.

Q. You mean, your meeting with government officials of the Alcoholic Tax Unit? A. That's correct. After that conversation of my report and their conversation with

respect to the agreement between them, Mr. Jaburg and Mr. Jacobs [8444] and Mr. Koerner left and I remained with Mr. Klein.

Q. Will you tell us as best you can recall the subject matter and the context of the conversation you had with Mr. Klein? A. We discussed in general the conference that was previously had between all the parties who were there when I came in and Mr. Klein stated that he was considering taking up with his associates the proposition of possibly dividing the country into various districts and, instead of giving R. C. Williams the entire country, possibly giving him only a part of the country.

We also discussed the question of engaging in business through the rest of the world, particularly Central and South America, since they were so-called hard money countries, they had dollars and could pay for imports, and shipping might be available to them, and the continuation of Harwood through Central and South America, and suggested he may give me some agencies through Central and South America for the distribution of Harwood.

He suggested along those lines that I form some Cuban corporations for myself and members of my family, he suggested four of them, because there are [8445] four members of my family, my wife and two children, and that he might give us the agencies to some of these countries of Central and South America.

I think at that time he also mentioned the possibility of other whiskeys and the possibility of getting some Scotch. He told me that Mr. Rosenberg could work out the details for me, because Mr. Rosenberg was experienced in forming Cuban corporations and had formed some for him

or was instrumental in forming them, that I should make the arrangements with Mr. Rosenberg.

Q. Have you exhausted your recollection as to the conversation at that time, Mr. Alprin? A. Generally, that is it.

Q. Upon your return to New York, what, if anything, did you do with respect to the formation of any Cuban corporations? A. When I got back to New York I did nothing.

[8446] Q. Did there come a time—well let me ask you, Mr. Alprin, up till that time—and we are now in March of 1946——

Mr. Kiendl: The middle of May.

Mr. Donohue: I am sorry.

Q. —the middle of May, 1946, had you ever formed a Cuban corporation? A. No, sir, I never had.

Q. Did there come a time when you had a discussion with someone else with respect to the formation of Cuban corporations? A. Yes, sir, I did.

Q. And with whom was that discussion had? A. Mr. Ellis Rosenberg.

Q. And can you tell us where and when? A. Well, there were several conversations with Mr. Rosenberg. On the occasion of his coming to my office in New York in the month of June 1946, he told me that Mr. Klein had spoken with him about the——

Mr. Kiendl: That is objected to, your Honor, as far as the defendant Klein is concerned on the ground it is not binding on him.

The Court: Sustained as to the defendant Klein.

A. He told me that Mr. Klein had told him about [8447] the arrangements for Cuban corporations and he wanted to know when I and my family could go to Cuba.

I told him I could make those arrangements about the end of the month inasmuch as my daughter was graduating from Connecticut College for Women and my son was graduating from Lawrenceville School at Lawrenceville, New Jersey.

Q. In the month of June? A. In the month of June.

Q. Did you arrange with Mr. Rosenberg to go to Cuba? A. I arranged with Mr. Rosenberg that I would be in Cuba at the time that he would be there. I did not go to Cuba with him.

Q. Did you in fact go——

The Court: Excuse me, Mr. Donohue. Did you have a rabbi coming?

Mr. Donohue: Yes, I did, your Honor.

The Court: He is here.

Mr. Donohue: I wonder if your Honor would permit me to withdraw the witness?

The Court: Yes.

(Witness temporarily excused.)

[8448] HARRY HALPERN, called as a witness in behalf of defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Rabbi Halpern, you are here voluntarily and without service of subpoena? A. That's right.

Q. And where do you live, Rabbi? A. 1615 Avenue I Brooklyn.

Q. And where is your synagogue or temple? A. 1625 Ocean Avenue in Brooklyn.

Q. And its name is what, please, sir? A. The East Midwood Jewish Center.

Q. And you are the rabbi of the East Midwood Jewish Center? A. That's right.

Q. And you have been for how long, Rabbi? A. 26 years.

Q. Are you an officer of the Rabbinical Assembly of American Rabbis? A. Yes.

Q. What office do you hold? A. I am the president.

Q. How long have you known Morris Alprin? A. About 35 years.

Q. As a matter of fact, you were his classmate in [8449] high school, were you not, Rabbi? A. That's right.

Q. And you graduated together with him in 1916? A. In Eastern District High School.

Q. Do you know other people in your community who also know Morris Alprin? A. I do.

Q. Do you know what Morris Alprin's reputation is among the people in the community whom you know who also know him for truth, veracity, honesty and integrity? A. His reputation is excellent.

Mr. Donohue: Thank you, Rabbi.

You may have the witness.

Mr. Bauman: No questions.

Mr. Donohue: Thank you.

(Witness excused.)

MORRIS O. ALPRIN resumed the stand.

Direct Examination Continued by Mr. Donohue:

Q. There came a time, Mr. Alprin, when in fact you did go to Cuba? A. Yes, sir.

Q. And do you recall about when it was? A. The last week in June, 1940.

Q. And how long did you remain in Cuba? [8450] A. About two weeks.

Q. Your wife and family went with you? A. We flew down together.

Q. Did you meet in Cuba Mr. Koerner and Mr. Roer? A. Yes, I did, and their wives.

Q. Did you know when you made your own arrangements to go to Cuba that Mr. Roer and Mr. Koerner were to be there at the same time? A. Mr. Rosenberg so informed me and I found out from them individually, too.

Q. Now when you went to Cuba what did you do with respect to the formation of Cuban corporations? A. I first conferred with Mr. Rosenberg who was there at the same time. As matter of fact, we all conferred, Mr. Rosenberg, Mr. Koerner, Mr. Roer and myself. Mr. Rosenberg explained to us——

Mr. Kiendl: May we have an objection to the conversation with Mr. Rosenberg, if your Honor please, on the same ground?

The Court: Objection of the defendant Klein is sustained.

A. Mr. Rosenberg explained to us the requirements and the necessities of Cuban corporations, and we agreed that we would have these corporations have broad trading [8451] powers to deal on any kind of merchandise, particularly alcholic beverages; that the officers and directors of each corporation would be the members of our respective families, and that there would be a small initial capitalization, that is a small amount of treasury stock issued; although the amount of unissued stock might be large, it could be paid in at any time necessary.

Q. Now I take it that these were broad agreements coincided in by Mr. Koerner and Mr. Roer, who you stated were also present at this conference with Mr. Rosenberg? A. That's correct.

Q. Having reached such an accord what, if anything, did you then do? A. Well, I was elected or selected to go with Mr. Rosenberg and see that all the necessary formalities were complied with.

Q. And where did you go with Mr. Rosenberg? A. Mr. Rosenberg took me to the office of—to the law firm of Dr. Moran.

Q. Tell us what occurred at Dr. Moran's office? A. When we came into the office of Dr. Moran he was just leaving, and Mr. Rosenberg told him that we were down to form some corporations and Dr. Moran referred us to——

Mr. Kiendl: Your Honor, I am sorry to interrupt [8452] in the middle of an answer, but I

would like an objection to this line of testimony on the same ground, too.

The Court: Sustained as to the defendant Klein.

A. (Continuing) Dr. Moran referred us to his associate, Dr. de Cubas and Mr. Rosenberg explained to Dr. de Cubas the purpose of our visit.

Dr. de Cubas said that inasmuch as the firm was representing Mr. Klein's corporations and since these corporations would be doing business with Mr. Klein's corporations in obtaining these agencies and the necessity of preparing contracts, his firm would not want to be in the position of representing two sides, and he said he would arrange to send us to another attorney whom he recommended for that purpose, and he so did.

Q. Now did there come a time either that day or some subsequent time when you went to the attorney recommended by Dr. de Cubas? A. I think it was on the following day Dr. de Cubas, Mr. Rosenberg and I came to the office of Drs. Valverde and Suarez—S-u-a-r-e-z, a partnership.

Q. And Dr. Valverde is the gentleman who testified [8453] here at this proceeding? A. Yes, sir.

Q. Now, will you tell us what occurred when you went to see Dr. Valverde? A. Well, Dr. de Cubas told him the purpose of our visit and left, and then Mr. Rosenberg and Mr. Valverde conferred with reference to the setup of the corporations, and Mr. Valverde said he would take care of it and let us know in a few days when to come down and sign whatever papers were necessary.

Q. And did there come a time when you did go down and did sign the necessary papers? A. Well, I think it was

four or five days thereafter, on a call from Mr. Valverde we all came down to Mr. Valverde's office and we signed all the necessary papers required by him.

Q. When you say "we" to your knowledge did Mr. Roer and Mr. Koerner likewise go down and sign the necessary papers in the formation of their corporations? A. Yes, sir.

Q. And you have heretofore seen in evidence the certificates of incorporation of the four corporations which you procured to be incorporated through Dr. Valverde at the time you are now discussing? [8454] A. Yes, sir. I turned it over to Mr. Victory.

Q. I beg your pardon? A. I turned over copies of them to Mr. Victory.

Q. Now will you tell us again if you can recall the names of those four corporations. A. One was Economica; that is the one that received the check. One was Aguila. One was Apollo and one was Marte.

Q. I hand you a paper writing and ask you if you can identify it. A. Yes, I can.

Q. As being what? A. This is a copy of a memorandum which Mr. Rosenberg took of all the details of my four corporations.

Mr. Donohue: May I have that marked, if it please your Honor, for identification, the Defendant Alprin's FN, and may I sub-number it 1, your Honor, because there are three?

Q. I hand a second paper writing and ask you if you can identify it? A. Yes, I can.

Q. As being what? A. This is similar to the copy of Mr. Rosenberg's notes on Mr. Roer's corporations.

Q. And from whom did you receive the copy? A. I didn't receive them from anybody. I made [8455] a copy of Mr. Rosenberg's notes.

Q. And where did you make the copy of Mr. Rosenberg's notes? A. In Havana.

Q. And that is the copy you made? A. No, that is not the copy. That is a typewritten copy of the copy I made.

Q. I hand you a third document and ask you if you can identify it. A. This is the same thing except that it refers to Mr. Koerner's corporations.

(Marked Defendant Alprin's Exhibits FN-1, FN-2 and FN-3 for identification.)

Mr. Donohue: We seem to have only one photostat. May I offer it to your Honor?

The Court: Thank you.

Mr. Donohue: I now offer it in evidence, if your Honor please.

Mr. Bauman: No objection.

Mr. Kiendl: Defendant Klein objects on the ground that they are not binding on him in any way, shape or manner and are not pertinent to the issues raised by the fifth count of the indictment.

Mr. Bender: Defendant Haas will object on the ground that the exhibits are not binding as to him, your Honor.

The Court: Defendant Alprin's FN-1, 2 and 3 [8456] are received without objection by the Government; the objection of the defendants Klein and Haas thereto being sustained.

(Defendant Alprin's Exhibits N-1, N-2 and N-3 for identification received in evidence.)

By Mr. Donohue:

Q. Now, as a matter of fact, Mr. Alprin, no one of the four corporations which you formed ever functioned according to the purposes for which they were formed, did they? A. They never did, sir.

Q. You never did receive an agency of any character for South or Central American countries in the name of any one of these four corporations? A. No, sir, I did not.

Q. Now I hand you a document and ask you if you can——

Mr. Bauman: Mr. Donohue, before you proceed, I wonder if you intend to summarize in a general way the exhibits which have been received in evidence.

Mr. Donohue: Yes, sir. Perhaps I had best do it now, if your Honor will permit me. Thank you, Mr. Bauman.

(Mr. Donohue read Defendant Alprin's Exhibits FN-1, 2 and 3 to the jury.)

[8457] Q. I hand you——

The Court: May I interrupt, Mr. Donohue. I don't suppose anybody will question the fact, but I have been a little bit confused by the various uses of these names. You will recall I asked Dr. Moran about last names in Cuba and he indicated that they

normally use as the last name the paternal family name, but on documents of official capacity they add the maternal maiden family name.

There has variously appeared in testimony before us, in statements and the like, the name of Dr. Valverde and Dr. Abril. Dr. Valverde and Dr. Abril are one and the same person. It is Dr. Alberto Valverde Abril. And on the official documents he gave us the whole works.

When you hear of Dr. Abril or Dr. Valverde, it is one and the same person. The same is true of Dr. Gustavo Suarez Ortega. He was Dr. Valverde's law partner. When there is reference to Dr. Suarez or Dr. Ortega, that is meant to refer to Dr. Gustavo Suarez Ortega.

Now we have finally gotten all those names straightened out.

[8458] *By Mr. Donohue*:

Q. Upon your return from Cuba, did you ultimately make inquiry of Dr. Valverde Abril concerning the possibility of putting more capital or more money into the Cuban corporations you had formed? A. I did.

Q. For what reason? A. Mr. Klein mentioned to me that the corporations would do business on a letter of credit basis. I was concerned that possibly my credit standing would not warrant the issuance of a letter of credit to a corporation with which I was identified, unless it was more heavily capitalized than mere nominal capitalization of $500. as each of these corporations were.

In anticipation of the possibility, I inquired of Dr. Valverde the procedure for the purchase of additional Treasury stock.

Q. I hand you a letter and ask you if you can identify it as being what (handing to witness)? A. Yes, I can identify it as a letter received by me from the law office of Valverde & Suarez, with reference to the four corporations and the purchase of additional Treasury stock.

[8459] Q. Was that in response to your inquiry of him concerning the putting of more capital into the corporation? A. Yes, sir.

Mr. Donohue: Would you mark this as Defendant Alprin's Exhibit FO for identification.

(Marked Defendant Alprin's Exhibit FO for identification.)

Mr. Donohue: I offer it in evidence, if it please the Court.

Mr. Kiendl: We object to it as not binding on the defendant Klein.

Mr. Bender: The defendant Haas likewise objects on the ground it is not binding on him, your Honor.

Mr. Bauman: No objection, your Honor.

The Court: The Defendant Alprin's FO for identification is now received without objection by the Government, the objection of the defendants Klein and Haas thereto being sustained.

(Defendant Alprin's Exhibit FO for identification received in evidence.)

Mr. Donohue: May I read it to the jury, your Honor?

[8460] The Court: Yes.

(Mr. Donohue reads Defendant Alprin's Exhibit FO to jury.)

The Court: We will interrupt now and take a recess for about 10 minutes.

(Short recess.)

By Mr. Donohue:

Q. Mr. Alprin, I forgot to ask Rabbi Halpern if you were a member of the rabbi's congregation? A. I have been for over 20 years.

Q. May I hand you, in the interest of time, two documents and ask you if you can identify them? A. Yes, I can.

Q. As being what, Mr. Alprin? A. Copies of my letters to Dr. Valverde dated August 20th and October 7, 1946.

Mr. Donohue: May I ask the clerk to mark them for identification.

The Court: As one exhibit?

Mr. Donohue: No, your Honor, two separate exhibits.

(Marked Defendant Alprin's Exhibits FP-1 and FP-2 for identification.)

Mr. Donohue: I offer them in evidence.

[8461] Mr. Bauman: I have no objection, sir, with the exception that I consent to the entry of

the exhibit without the underlining, unless the testimony is that such underlining appeared on the original.

Mr. Donohue: I have no objection. The underlining obviously was not on the original.

The Court: You are referring, of course, to Defendant Alprin's FP-2 for identification?

Mr. Bauman: Yes.

The Court: Does that apply also to the interlineation in the second line of the last paragraph? The elimination of the letter "f"?

Mr. Donohue: I am not certain whether it should be eliminated or not.

The Court: It can make sense either way.

Mr. Donohue: May I ask Mr. Alprin?

The Court: Yes.

Mr. Bauman: What I am consenting to is the exhibits in their original form.

The Court: But I want to know whether he will also state that the original form as to the second line of the last paragraph is one or the other.

[8462] Mr. Donohue: Mr. Alprin says it should be "or" and was stricken in the original letter.

The Court: Then that qualification doesn't apply. It applies only to the underlining in the second paragraph.

Mr. Bauman: Yes.

Mr. Kiendl: The defendant Klein objects to both exhibits on the ground they are not binding on him.

Mr. Bender: The defendant Haas likewise objects.

The Court: Defendant Alprin's FP-1 and FP-2 are severally received without objection by the Government, the objection of the defendants Haas and Klein thereto being sustained.

(Defendant Alprin's Exhibits FP-1 and FP-2 for identification received in evidence.)

[8463] Q. Mr. Alprin, may I offer you two more letters and ask you if you can identify them. A. Yes, I can.

Q. As being what, Mr. Alprin? A. Well, one is a letter from Dr. Valverde to me, dated September 27, 1949, and the other is a copy of my letter to Dr. Valverde, dated September 30, 1949.

Q. Would you say the one is the answer to the other? A. My letter is the answer to Dr. Valverde's.

Mr. Donohue: May I ask that these be marked Defendant Alprin's next in sequence as one exhibit.

(Marked Defendant Alprin's Exhibit FQ for identification.)

Mr. Donohue: I offer them in evidence, if it please your Honor.

Mr. Bauman: The Government has no objection to Defendant's FQ.

Mr. Kiendl: Defendant Klein objects to them both on the ground they are not binding on him.

Mr. Bender: I have no objection to both letters.

The Court: Defendant Alprin's FQ for identification is now received without objection by the Government or the defendant Haas; the objection of [8464] the defendant Klein thereto being sustained.

Mr. Kiendl: Your Honor, wouldn't it be a little better if the record showed these as FQ-1 and FQ-2?

The Court: All right. Then Defendant Alprin's FQ-1 will be the letter from Abril to Alprin dated September 27, 1949, and the unsigned copy of a letter with the initials M. O. A., dated September 30, 1949, addressed to Mr. Abril, will be FQ-2.

(Marked Defendant Alprin's Exhibit FQ-1 and FQ-2 in evidence.)

Q. Mr. Alprin, can you identify the document now in your hand? A. Yes, sir, I can.

Q. As being what? A. A letter from Dr. Abril to me dated March 17, 1947.

Mr. Donohue: May I ask the clerk to mark that the next in sequence, Alprin for identification.

(Marked Defendant Alprin's Exhibit FR for identification.)

Mr. Donohue: And now I offer it in evidence, if your Honor pleases.

Mr. Bauman: No objection, your Honor.

Mr. Kiendl: Defendant Klein objects as not binding on him.

[8465] Mr. Bender: Defendant Haas will object; not binding as to him, your Honor.

The Court: Defendant Alprin's FR for identification is now received without objection by the Government; the objection of the defendants Klein and Haas thereto being sustained.

(Defendant Alprin's Exhibit FR for identification received in evidence.)

Q. Mr. Alprin, at any time following your return from Cuba, in the summer of 1946, did you authorize Ellis Rosenberg to make any inquiry of Dr. Valverde Abril concerning your corporations? A. No, sir, I did not.

Mr. Donohue: May I now read these exhibits to the jury, if it please your Honor?

The Court: Yes.

(Mr. Donohue read Defendant Alprin's Exhibits FP-1, FP-2, FQ-1, FQ-2 and FR to the jury.)

[8466] Q. Did you, Mr. Alprin, at any time authorize Dr. Valverde Abril to draw any bank resolutions either for Ellis Rosenberg or anybody else? A. I never did, except, Mr. Donohue, the necessary bank resolutions to open the accounts when the corporations were formed.

Q. That was done while you were in Havana in 1946? A. That's correct.

Q. Subsequent thereto you gave no instructions of any character to him? A. That's correct.

Q. Following your return to New York in the late summer of 1946, when was it, if at all, that you next had any discussion with Mr. H. H. Klein concerning the investments which you had made by delivering to Mr. Klein your bank check in the amount of $500 drawn by you and payable to Tivoli Trading Company, S. A., on October 3, 1945? A. I didn't quite get the import of that question, Mr. Donohue.

Q. When after your return from Cuba in the late summer of 1946 was it, if at all, that you ever had any conversation with Mr. H. H. Klein concerning the delivery by you to him of your check in the amount of [8467] $500 payable to Tivoli Trading Company, which you have heretofore testified you gave him on October 3, 1945? A. The conversation was to the general effect of Mr. Klein's telling me he was winding up his operations in Harwood and would wind up my investment in it and would let me know soon about the windup and getting my money. That conversation was—I don't remember whether it was on the telephone or personally, whether it was in New York or Baltimore.

Q. Did there come a time—— A. It was just a general conversation along those lines.

Q. Did there come a time in 1947 thereafter that you went to Baltimore? A. Yes, sir.

Q. Will you state to the Court and jury your best recollection of when and the circumstances as they occurred in Baltimore. A. I received a telephone call from Mr. Klein to come to Baltimore with reference to the winding up of the Harwood operation. That was sometime around the end of March or early April, 1947. I went to Baltimore, came to Mr. Klein's office and that is where the conversation took place and that is where the [8468] delivery of the check took place.

Q. Do you recall, Mr. Alprin, whether you went to Baltimore alone or in company with anyone else? A. I don't remember, though I heard Mr. Roer testify he went down with me, but I don't have any recollection of that.

Q. You did hear Mr. Roer's statement on the record wherein he stated that you went to Baltimore with him on this occasion? A. Yes.

Q. Would you say Mr. Roer was mistaken? A. I don't know whether he was or not. I have no recollection of going down with anybody.

Q. Do you have any recollection of coming back with him? A. Yes, I have a recollection of returning with him.

Q. Do you have any recollection while you were at Baltimore that you were at Mr. Klein's office? A. Yes.

Q. Do you have any recollection while you were at Mr. Klein's office of Mr. Roer being there? A. I think so. It is a hazy recollection.

Q. Do you have any recollection of any person other than Mr. Roer being in Mr. Klein's office? A. I remember Mr. Rosenberg being there and I [804] think Mr. Rokoff was there.

Q. Was Mr. H. H. Klein there? A. Yes.

Q. Will you tell us what conversation took place between you and Mr. Klein, whether any other person was present and what if anything occurred on that occasion. A. I was in Mr. Klein's private office, large office, and I believe Mr. Rosenberg and Mr. Rokoff or both of them were in that room at that time. We were talking generally for a short time. Then Mr. Klein called me into the washroom, which is part of, or adjacent to his office, and he gave me two bank drafts to the order of my corporation, Economica Agencias, both in the same amount, which he told me was in his liquidation of the Harwood picture and my investment in Tivoli in that picture; that one of the checks was for Mr. Koerner and one of the checks was for me. I was not to deposit the check, but to hold it awaiting his instructions; that he had not wound up the companies entirely, there was still some tag ends of details open. I testified pre-

viously I have a hazy recollection that he said that some of the OPA matters were still pending and they were subpoenaing records and things like that, that under no circumstances should I give Mr. Koerner's [8470] check to him, but to hold it, and that I was to hold my own until he instructed me or gave me information with respect to it.

Q. Now, on your return to New York when was it that you discussed the matter of your holding a check or bank draft for Irving Koerner? A. When I got back, I think it was that same evening, I called Mr. Koerner at his home and told him——

Mr. Kiendl: May we object to this conversation, your Honor?

The Court: Sustained.

A. (Continuing) Told him that Mr. Koerner had given me—that Mr. Klein had given me a check for him with instructions to hold it, and I was holding it until Mr. Klein advised me otherwise.

Q. Did Mr. Koerner at that time offer any objection to your holding the draft as you so indicated? A. Not at all.

Q. Now, did there come a time subsequent—do I understand you correctly to say that this was sometime in March or early April of 1947? A. That's correct.

Q. Did there come a time subsequent to the incident about which you have testified that you received any further [8471] instruction from Mr. Klein with respect to either or both of these drafts? A. Yes, sir.

Q. Will you tell us when, if you can, and what the instructions were, and by what medium they were communi-

cated to you? A. It was either a personal conversation or a telephone conversation, I don't remember which, in which Mr. Klein told me to take my check and deposit it in the Royal Bank of Canada, Toronto; that I should communicate with Mr Haas, who would introduce me to the manager there, who would tell me about the mechanics of making a deposit, and to continue to hold the Koerner check until he told me otherwise.

Q. What did you do pursuant to that direction? A. I communicated with Mr. Haas and he gave me a form of bank resolution of Royal Bank of Canada——

Mr. Kiendl: May we object to the conversation with Mr. Haas, your Honor?

The Court: Sustained as to defendant Klein.

A. (Continuing) —and arranged with Mr. Haas to go to Toronto. I wanted to go by air. Mr. Haas has agoraphobia, fear of height, and travels by train. I acceded to Mr. Haas by going by train.

Q. And you went where in Canada? [8472] A. To Toronto.

Q. And to what bank? A. Royal Bank of Canada.

Q. When you have been referring to your check, may we understand you to refer to a bank draft in the amount of $264,000-odd? A. That's correct.

Q. Can you tell me what bank was the drawer of that draft? A. It was, as I recollect it, a bank draft of the Royal Bank of Canada, Montreal, drawn on its New York agent, the Royal Bank of Canada, New York.

Q. And you went then to the Royal Bank of Canada, Toronto Branch? A. That's right.

Q. And there you met a Mr. Davis? A. Yes, Mr. Haas, when I discussed going up with him, the formalities of opening an account, told me that the bank required a resident of Canada or of this City.

Q. And Mr. Davis served that purpose? A. That's correct.

Q. And you did deposit your draft in an account of Economica Agencias? A. Yes, sir.

[8473] Q. On the same day, or simultaneously with the deposit of your draft in the amount of $264,000 in the Royal Bank of Canada, Toronto Branch, to the deposit of La Economica Agencias, there has been testimony that you divided the draft into three checks. Will you state to the jury the circumstance or the reason for what was done if it was so done. A. It was so done. When I received that check or that draft it appeared to me to be a very large amount. It was the largest amount I ever had any dominion or control over that might ultimately come to me, certainly, and in an exercise of caution I thought it might be best to split up that amount into three accounts or into as many accounts as I could.

I originally thought of dividing it into four accounts, but I realized that one of the corporations was a corporation of which my son, Walter, was president and a director, and who was at that time a minor. I didn't want to get involved with any questions of rights or obligations of minors or their responsibilities with respect to bank accounts, particularly since Mr. Klein had control over this money and I was in effect an escrowee or a trustee.

So I split up the money into arbitrary amounts, [8474] simultaneously with the deposit. While I was sitting at the Toronto Branch of the bank with Mr. O'Neill I split it up into three accounts of approximately 90 or 95 thousand, whatever the amounts were, in each of the accounts.

Q. Now, my attention was diverted for a moment. When you said in an abundance of caution, caution for what purpose? A. Well, I did not know whether or not Canada had a law similar to that which we have in the United States for Federal Deposit Insurance and the amount of any such insurance, and it might have been better to have it spread into as many accounts as I had control of for that protection.

Q. Now, you had the same exclusive dominion and control over the Economica Agencias account which you deposited in the Royal Bank of Canada, Toronto office, as a single deposit, as you did in a deposit in the names of three of the four corporations which were your corporations, did you not?

Mr. Bauman: Before you answer that, Mr. Alprin, may I have the question read?

The Court: Yes.

(Question read.)

[8475] Mr. Bauman: Thank you, sir. I am sorry, Mr. Donohue. No objection.

A. I had the same control over all the accounts.

Q. You did not feel that in any way you were breaching your obligation as a fiduciary or as an escrowee by dividing this draft into three accounts rather than permitting it to

remain in one? A. No, sir, no more different than I would put it into two trust accounts of my own.

Q. You felt that in the possibility there may be some kind of an insurance of bank deposits in Canada that the three accounts were safer than one? A. That's correct.

Q. You did not do so by direction of anyone, did you, Mr. Alprin? A. No, that was my own exercise of caution and my own responsibility.

Q. Can you tell us, by the way, the date of the deposit in Canada? A. Yes. May 5th, 1947.

Q. On your return to New York did you report to Mr. Klein what you had done? A. I don't remember whether I did or not.

Q. Did there come a time subsequently when you discussed with Mr. Klein the fact that you had deposited a draft which he asked you to hold and later [8476] asked you to deposit in Canada at his request, that you had done so? A. I think sometime after my return. I don't know exactly when I told him.

Q. Now, from May 5th, 1947, when you made the deposit in Canada, did there come a time when you were informed by anyone that that account in the Royal Bank of Canada, Toronto, had been frozen? A. Yes, sir.

Q. Can you tell us when and through what medium you received that information? A. It was about the end of that same month, about the end of May, possibly the first few days of June, when Mr. Klein told me that all Canadian accounts of foreign corporations in which Mr. Klein or UDL was identified had been frozen by the Canadian Government.

Q. What did he tell you, if anything, to do about it? A. He told me to do nothing about it, that he would take care of it.

Q. Did you, in fact, do anything about it? A. Nothing but worry.

Q. Did you engage any counsel in Canada to seek to unfreeze these accounts? A. No, sir, I did not.

[8477] Q. Did there come a time subsequently when you were informed that the Canadian bank accounts were unfrozen by the Canadian Government? A. Yes, sir.

Q. Do you recall when that was? A. The end of January or early February, 1949.

Q. How did you receive that information and from whom? A. From Mr. Klein, either by telephone or personal conversation.

Q. At the time you were informed by Mr. Klein of the unfreezing of the Canadian bank accounts did he direct you to do anything with respect to the accounts in the names of your three corporations on deposit with the Royal Bank of Canada, Toronto branch? A. Yes, sir, he did.

Q. What did he tell you to do? A. He told me to get a bank draft of the Royal Bank of Canada, similar to the one that he had given to me, to the order of the same corporation and the same form, and to hold it.

I reminded him that I had expended some $50 and change in the deposit of that. He said, "That's all right, get a check for whatever the balance is."

[8478] Q. And did you go to the Royal Bank of Canada, Toronto Branch, pursuant to those instructions? A. Yes, I did.

Q. Did you obtain a single bank draft made payable to La Economica Agencias in the amount of the original draft minus $50.00? A. I did.

Q. When did you do that, Mr. Alprin, if you recall? A. On February 10, 1949.

Q. And when you returned from Canada after February 10, 1949, did you continue to hold that draft? A. I did.

Q. During the period following the receipt of the second Agencias bank draft which you have testified you received in late March or early May of 1947, from Mr. Klein with the instruction to hold it for Mr. Koerner until he, Mr. Klein, directed you to turn it over to Mr. Koerner, did Mr. Koerner make any demand on you for the possession of that draft? A. What period of time is this, Mr. Donohue?

Q. Following the delivery of the draft to you in late March or early May of 1947 and following your informing Mr. Koerner that you so held the draft on your return to New York did Mr. Koerner make any demand upon you for the delivery of that draft to him? A. He did.

[8479] Q. Can you tell us when or under what circumstance the first demand was made? A. I can't recollect the first demand, though I know he made several demands which increased in number during 1948, 1949, 1950, particularly more pressing in 1950.

Q. And 1950 was after the unfreezing of the Canadian accounts? A. Yes.

Q. Did you at any time inform Mr. Koerner or do you know whether Mr. Koerner knew that the Canadian ac-

counts, including your draft, were frozen by the Canadian Government?

Mr. Kiendl: The defendant Klein objects to that, your Honor.

The Court: Sustained.

A. I told him according to Mr. Klein's instructions I had deposited one draft, that I was still holding his, that the accounts of the corporations I controlled were frozen. He knew that.

Q. Did there come a time in 1950 when Mr. Koerner made more than a demand of you for the possession of the draft which you were holding? A. Yes, sir.

[8480] Q. What happened?

Mr. Kiendl: The defendant Klein objects, your Honor.

The Court: Sustained.

Mr. Donohue: I will withdraw the question, your Honor.

Q. I hand you this paper and ask you if you can identify it? A. I could identify this.

Q. You identify that as a letter addressed to you by Irving Koerner in 1952? A. It is a registered letter from Mr. Koerner to me dated February 27, 1952.

Mr. Donohue: I offer it in evidence, if your Honor please.

(Marked Defendant Alprin Exhibit FS for identification.)

Mr. Bauman: The Government has no objection.

Mr. Kiendl: The defendant Klein objects to it as not binding on him.

Mr. Bender: The defendant Haas has no objection.

The Court: Defendant Alprin's Exhibit FS for identification is now received without objection [8481] by the Government or the defendant Haas. The objection of the defendant Klein is sustained.

(Defendant Alprin's Exhibit FS for identification received in evidence.)

Mr. Donohue: May I read it to the jury, your Honor?

The Court: You may.

(Mr. Donohue read Defendant Alprin's Exhibit FS to the jury.)

Q. What did you do after you received that letter with respect to the subject matter thereof? A. Pursuant to a conference we had that same day at the office of Mr. Haas——

Mr. Kiendl: May we object to this, too, your Honor.

The Court: Sustained.

A. (Continuing) —at which were present Mr. Haas, Mr. Koerner, his attorney George Glassgold and I, at which time I was informed by Mr. Koerner and Mr. Glassgold that Mr. Koerner had been on the West Coast, had been working for one of the distillers there, and seen Mr. Klein and discussed his check with him, that Mr. Klein would

authorize me or he said would authorize me to deliver the check [8482] to Mr. Koerner, and he was therefore sending a registered letter at the direction of his attorney to me that day to turn the check over to him. On receipt of that letter the next day, March 28th, knowing that Mr. Klein was on his way to the Coast——

Q. May I interrupt you for a moment before we get to that, Mr. Alprin, to ask you on the day you received this registered letter, where was physically the draft which you were holding for Mr. Koerner? A. That draft was supposed to be, I think it was, in a box, a vault at the Sterling Safe Deposit Company under the joint control of Mr. Haas and Mr. Glassgold.

Q. What do you know personally about the arrangement that was made for the deposit of that check in a vault here in New York? A. I know in the early part of December Mr. Schlesinger, Mr. Haas' partner, telephoned me to come up to the office, Mr. Schlesinger's office, and attend a conference at which Mr. George Glassgold, Mr. Koerner, Mr. Schlesinger, Mr. Haas and I were present. Mr. Schlesinger said——

[8483] Mr. Kiendl: May we object to this, your Honor.

The Court: Sustained.

A. (Continuing) Mr. Schlesinger said that Mr. Glassgold was a friend of his and had importuned him to call the conference. Mr. Glassgold said he wanted the draft turned over to Mr. Koerner. I told him I could not do that and, as an attorney, he would realize I could not do that without

violating instructions. I told him I would not and could not until I was released by Mr. Klein.

Q. Did you then arrange for an escrow arrangement to be made whereby the draft was to be deposited in the Sterling Safe Deposit vault under the joint control of the four named people? A. Yes, sir.

Mr. Donohue: If it please your Honor, I have just one more character witness who came in a few minutes ago. Might I withdraw Mr. Alprin and call this character witness and then adjourn for the day?

The Court: Surely.

(Witness temporarily excused.)

[8484] MORRIS SCHEINICK, called as a witness on behalf of the defendant Alprin, being first duly sworn, testified as follows:

Direct Examination by Mr. Donohue:

Q. Mr. Scheinick, is it a fact that you are here voluntarily and without the service of a subpoena? A. Yes, sir.

Q. Where do you live? A. 1809 Glenwood Road, Brooklyn.

Q. What is your business, occupation or profession? A. I am in the wholesale liquor business, and I am an attorney by profession.

Q. As a matter of fact, you were formerly or at one time an assistant U. S. attorney? A. That's right.

Q. For the Eastern District of New York? A. That's correct.

Q. And what is the wholesale organization of which you are president, sir? A. Alpine Wine & Liquor Company, in Brooklyn, and Webster Lawrence in Westbury, Long Island.

Q. Is your wholesale company a member of the Greater New York Wholesale Liquor Dealers Association? [8485] A. The Alpine Wine & Liquor Company is.

Q. Do you hold any office in that organization, the Greater New York Wholesale Liquor Dealers Association? A. I am vice-president.

Q. Mr. Morris Alprin is counsel for your organization? A. That's right.

Q. Do you know that in May 1954 he was the subject of an indictment which is now being tried in this court? A. I do.

Q. Have you retained his services as counsel for the organization of which you are vice-president?

Mr. Bauman: Your Honor, I object to that question on the ground it is not proper character testimony.

Mr. Donohue: I will withdraw it.

The Court: Very well, it is withdrawn.

Q. You know Morris Alprin, of course? A. Yes.

Q. How long have you known him? A. Upward of 15 years or more.

Q. Do you know the people who know him? A. Yes, I do.

Q. Do you know what Morris Alprin's reputation [8486] is in the community among the persons whom you

know who know him for truth, veracity, honesty, integrity and for observance of the law? A. His reputation for all of those characteristics is good.

Mr. Donohue: You may have the witness.

Cross Examination by Mr. Bauman:

Q. Just one or two questions, Mr. Scheinick. Do I understand that you went into business and have pretty much left the practice of law? A. Yes.

Q. You went into the wholesale whiskey business, is that correct? A. On December 5, 1933, the day of repeal.

Q. It was thereafter and in connection with your whiskey business that you know and have known Mr. Alprin, is that correct? A. That's correct.

Mr. Bauman: I have nothing further.

Redirect Examination by Mr. Donohue:

Q. I take it you found the whiskey business more profitable than the law business?

Mr. Bauman: I object.

Mr. Donohue: I will withdraw it.

[8487] The Court: After the Court takes judicial notice of the fact that it is more profitable.

Mr. Bauman: More profitable than being an assistant U. S. attorney.

The Court: Now we will all weep on each other's shoulders, but the jury does not have to witness that morbid event. The jury is excused until tomorrow morning at 10.30.

(The jury left the courtroom.)

Mr. Kiendl: Although the deadline has gone by by two minutes, your Honor, we have two additional requests to charge (handing to the Court).

The Court: Very well.

(Adjourned to August 10, 1955, at 10.30 a.m.)

[8488] New York, August 10, 1955; 10.30 o'clock a. m.

TRIAL RESUMED.

(Jury present.)

MORRIS O. ALPRIN resumed.

Direct Examination Continued by Mr. Donohue:

Q. I interrupted you yesterday, Mr. Alprin, as you were discussing the defendant Alprin's FS in evidence. Will you again look at Exhibit FS in evidence and then I would like to ask you a few questions about it (handing to witness). A. Yes, sir.

Mr. Donohue: Your Honor, I think I failed to read this to the jury yesterday; may I do so now?

The Court: Yes.

Mr. Donohue: I recall now I did read it to the jury yesterday, your Honor.

Q. This is a letter received by you from Irving Koerner on February 27 or 28, though it is dated February 27? [8489] A. There is a notation on the envelope it was received February 28, 1952.

Q. What were the circumstances leading up to the receipt of this letter? A. At a conference had that day Mr. Koerner told me that he had been on the Coast, had seen Mr. Klein and he discussed his draft with him and that Mr. Klein had authorized the release of the draft to him.

Mr. Kiendl: Your Honor, may we have an objection to this conversation.

The Court: Sustained.

A. (Continuing) Mr. Glassgold then said he would have Mr. Koerner make a formal demand upon me by registered letter, as a result of which I received that registered letter the next day.

Q. Upon receipt of that letter, what if anything did you do? A. I tried to communicate with Mr. Klein and ascertained that he was on his way to the Coast, to his home in Los Angeles.

Q. I hand you a document and ask you if you can identify it (handing to witness)? A. Yes, sir, I can.

[8490] Mr. Donohue: May I have this marked as Defendant Alprin's Exhibit FT for identification.

(Marked Defendant Alprin's Exhibit FT for identification.)

Mr. Donohue: I hand your Honor a copy (handing to Court).

Q. You identify that document as being what, Mr. Alprin? A. A bill from the Telephone Company to the

Greater New York Wholesale Liquor Dealers Association where I maintained an office.

Q. For what period? A. For the month of March, for telephone charges for the preceding month.

Mr. Donohue: I offer the document in evidence, your Honor.

Mr. Kiendl: Defendant Klein objects as not binding on him.

Mr. Bauman: The Government has no objection, your Honor.

Mr. Bender: The defendant Haas will object.

The Court: Defendant Alprin's Exhibit FT for identification is received in evidence without [8491] objection by the Government, the objections of the defendants Klein and Haas being sustained.

(Defendant Alprin's Exhibit FT for identification received in evidence.)

Q. By looking at Exhibit FT in evidence, can you tell us the date when you phoned Mr. H. H. Klein in Los Angeles, California? A. February 29.

Q. Will you tell the Court and jury as best you can recall the conversation which you had with Mr. Klein on the telephone on February 29, 1952. A. The substance of that conversation was that I told Mr. Klein that Mr. Koerner and Mr. Glassgold had made demand upon me for the draft which I was holding subject to his instructions, that Mr. Koerner stated that he had seen Mr. Klein in California, from which he had just returned, and that Mr. Klein had authorized the release of the check to Mr. Koer-

ner. Mr. Klein said it was all right to release it and give to him, and feeling that if he released Mr. Koerner's check I could ask Mr. Klein about the release of mine, I did, and he said, "Yes, you can use your check. Get a good tax man." I said, "what do you mean?" He said, "I can't talk on the telephone. [8491a] Mr. Rosenberg will be in to see you on Monday. Don't do anything until Monday, when Mr. Rosenberg will come to see you."

[8492] Q. Referring to Mr. Rosenberg's coming to see you on Monday, can you tell us the day of the week on which you had the phone call or phone conversation? A. It was on a Friday. The telephone call was not completed until late that evening at my home.

Q. Did Mr. Rosenberg come to see you on Monday? A. He did.

Q. Will you tell us the conversation as best you can recall it between yourself and Mr. Rosenberg held on the Monday following your phone call to Los Angeles?

Mr. Kiendl: That is objected to.

The Court: Sustained.

A. Mr. Rosenberg said Mr. Klein had spoken to him about my telephone call, and he said that since Koerner had not had the use of his draft for a long period of time, I should obtain a release from Mr. Koerner and his Cuban corporations to me and to Economica, the corporation to which the draft had been issued.

Q. I hand you a paper writing and ask you if you can identify it? A. Yes, I can.

[8493] Mr. Donohue: May I ask the clerk to mark this Defendant Alprin's FU for identification.

(Marked Defendant Alprin's Exhibit FU for identification.)

Mr. Bauman: May I ask the witness a preliminary question, your Honor?

The Court: Yes.

Preliminary Examination by Mr. Bauman:

Q. Mr. Alprin, is this your office file copy of the letter you say you sent? A. That is correct.

Q. Was the original of that put into an envelope, stamped and mailed? A. Yes, sir.

Q. Then this is the copy that has been in your file since March 6, 1952? A. That is correct.

Mr. Bauman: No objection, sir.

Mr. Kiendl: Defendant Klein objects to it as not binding on him.

Mr. Bender: Defendant Haas has no objection, your Honor.

Mr. Donohue: I offer the Defendant Alprin's FU in evidence, if your Honor please.

[8494] The Court: Defendant Alprin's FU is received without objection by the Government or the defendant Haas. The objection of the defendant Klein thereto is sustained.

(Defendant Alprin's Exhibit FU for identification received.)

Mr. Donohue: May I read it to the jury, if it please your Honor.

The Court: Surely.

(Mr. Donohue read Defendant Alprin's Exhibition FU to jury.)

By Mr. Donohue:

Q. I hand you a paper writing and ask you if you can identify it? A. Yes, I can.

Mr. Donohue: Mr. Clerk, would you mark this document as the Defendant Alprin's FV for identification.)

(Marked Defendant Alprin's Exhibit FV for identification.)

Mr. Kiendl: Defendant Klein objects to it only on the ground that it is not binding on him.

Mr. Donohue: May I first offer it in evidence, your Honor.

[8495] Mr. Kiendl: Oh, I am sorry; anticipatory.

Mr. Donohue: That is all right, Mr. Kiendl.

I offer the Defendant Alprin's FV in evidence, your Honor.

Mr. Bauman: The Government has no objection.

Mr. Bender: Defendant Haas has no objection.

The Court: The Defendant Alprin's FV for identification is now received without objection by the Government or the defendant Haas, the objection of defendant Klein thereto being sustained.

Mr. Donohue: May I read it to the jury, your Honor?

The Court: Please.

(Mr. Donohue read Defendant Alprin's Exhibit FV to jury.)

By Mr. Donohue:

Q. Now, Mr. Alprin, I hand you one more document, or perhaps I should say three——

Mr. Donohue: And may I ask, if your Honor please, that these three—four be marked the [8495a] Defendant Alprin's FW, perhaps 1, 2, 3 and 4, as a single exhibit—I am afraid there are five, if it pleases your Honor.

(Marked Defendant Alprin's Exhibit FW-1 through FW-5, respectively, for identification.)

[8496] Mr. Donohue: I offer it in evidence.

Mr. Bauman: No objection, your Honor.

Mr. Kiendl: The defendant Klein objects as not binding on him.

Mr. Bender: No objection, your Honor.

The Court: The defendant Alprin's Exhibit FW-1 through 5 are received without objection by the Government or the defendant Haas, the objection of the defendant Klein thereto being sustained.

(Defendant Alprin's Exhibit FW-1 through 5 for identification received in evidence.)

Q. Mr. Alprin, these five documents that are in evidence as Defendant Alprin's FW-1 to 5, were they prepared by you? A. They were.

Q. Are those the releases that you procured from Irving Koerner and from each of his four corporations upon the delivery to him or to his counsel of the draft in question? A. Yes, sir.

Mr. Donohue: May I briefly call the jury's attention to their nature?

The Court: Yes.

(Mr. Donohue read Defendant Alprin's [8497] Exhibit FW-1 through 5 to the jury.)

Q. Mr. Alprin, did you subsequent to the phone call of February 29 deposit your own draft? A. I did, sir.

Q. You deposited it ultimately to your own personal account? A. That's correct.

Q. When? A. Originally March 7th, transferred to my own account March 11th, I believe, when the check cleared.

Q. I hand you a final document and ask you if you can identify it (handing to witness).

Mr. Donohue: May I hand your Honor a copy (handing to the Court).

A. Yes, I can.

Q. As being what? A. Declaration of estimated tax for the year 1952, signed by my wife and me.

Mr. Donohue: I offer it in evidence, if your Honor please.

(Marked Defendant Alprin's Exhibit FX for identification.)

Mr. Bauman: No objection.

Mr. Kiendl: Defendant Klein objects on [8498] the ground it is not binding in any wise on him.

Mr. Bender: Defendant Haas has no objection.

The Court: Defendant Alprin's Exhibit FX is received without objection by the Government or the defendant Haas, the objection of the defendant Klein thereto being sustained.

(Defendant Alprin's Exhibit FX for identification received in evidence.)

Q. You have identified Defendant Alprin's Exhibit FX in evidence as the declaration of estimated tax for the year 1952? A. That's correct.

Q. Filed by you and your wife. Can you tell the filing date by the Government stamp that appears on the face of it? A. It is dated March 12, 1952, and was filed together with the check for $19,250 stamped as received by the Collector of Internal Revenue on March 12, 1952.

Q. There has been heretofore introduced in evidence as Defendant Alprin's Exhibit FH a declaration of estimated tax by Morris and Sadie Alprin, your wife, for the same year, 1952? A. Yes, sir.

[8499] Q. What happened to Exhibit FH? A. I was holding it. I received it from Mr. Haas' office in the usual course. Their office prepared it on the basis of my previous income tax return and showed the estimate on the same basis as the previous year. I usually hold them until at or about tax time to forward a check. When I received and deposited the check, a new estimate was prepared on the basis of the receipt of that check.

Q. You mean when you received and deposited the bank draft of $204,000? A. Yes.

Q. You then had prepared—by the way, was the Defendant Alprin's Exhibit FH, which bears I think the signature of yourself and your wife, ever actually filed with the Government? A. No, sir.

Q. And Exhibit FX was filed? A. That's correct.

Q. The Defendant Alprin's FH which you hold in your hand was prepared by Mr. Haas' office? A. That's correct.

Q. And his office had prepared your tax returns [8500] for many years prior to 1952? A. That's correct.

The Court: Are the signatures crossed out on that?

Mr. Donohue: Yes, they are, your Honor.

Mr. Bender: Would you be good enough to repeat the last question and answer.

(Record read.)

Q. Would you tell us by whom the reason therefor the Defendant Alprin's FX was prepared? A. Exhibit FX was prepared by Mr. Michael Kaminsky.

Q. Who was Michael Kaminsky? A. Mr. Michael Kaminsky is a tax consultant and attorney.

Q. Was he formerly employed by the Bureau of Internal Revenue here in the City of New York? A. So I understand, for about 17 or 20 years.

Q. Why did you have Mr. Kaminsky prepare the Defendant Alprin's FX when Mr. Haas' office had prepared your tax returns, including the Defendant Alprin's FH since 1937?

Mr. Kiendl: That is objected to so far as the defendant Klein is concerned as not binding [8501] on him.

The Court: Sustained.

A. At or about the time that I deposited the check I conferred with Mr. Haas about making the new estimate and he told me, as I very well knew, that his wife was very, very ill, she had cancer, and he was busy chasing around with her from hospital to hospital for diagnosis and treatment. He said "I better recommend somebody to you who will take care of these things, for I am not going to be in a position to do it.

Q. As a matter of fact, Mr. Haas shortly thereafter lost his wife, did he not? A. Yes, very unfortunately.

Q. This then was prepared by Mr. Kaminsky, you signed it and sent it to the Bureau of Internal Revenue with your check? A. That's correct.

Mr. Donohue: May I read it to the jury, your Honor?

The Court: Yes.

(Mr. Donohue read Defendant Alprin's Exhibit FX to the jury.)

[8502] Q. Now subsequently, Mr. Alprin, during the tax year for which this estimated return was filed, did you make succeeding quarterly payments sufficient to pay the entire tax during the year's period of time? A. That is correct, and I think there was a balance of a hundred odd dollars after I filed my return, and that was paid with my return.

Q. In other words, you had failed to estimate your tax accurately within $100? A. That is correct.

Q. And you paid that balance? A. Yes.

Q. And subsequently, when you filed your 1952 tax return, which is in evidence, on or about the 15th of March, 1953, you set forth the transaction out of which this estimate arose? A. That is correct.

Q. Mr. Alprin, did there come a time in 1952 when you were asked to appear in the office of the Bureau of Internal Revenue of New York for the purpose of answering certain questions? A. Yes, sir.

Q. You will recall that the questions and [8503] answers made of you and by you by Mr. Victory and Mr. McCarthy are an exhibit here in evidence or are in evidence in this trial? A. Yes, Mr. Dart was there too.

Q. And that was in September or October of 1952? A. The first one was in September, and the second one was in October.

Q. Did you have any reluctance or hesitance in answering any of the questions that were asked of you? A. None at all, sir.

Q. Was that the first occasion in which the Bureau of Internal Revenue sought to inquire of you with respect to the transaction which we are inquiring into here? A. Yes, sir.

Q. Did you offer and did you in fact turn over to Mr. Victory and Mr. McCarthy documents which were in your possession at their request or at your own suggestion? A. Yes, sir, I did, and I offered them the use of my files or anything they wanted.

Q. Mr. Alprin, you are charged in the surviving count of this indictment from on or about the 1st of [8504] June, 1946, up to the time of the filing of this indictment in May or September of 1954 with having conspired with Hyman Harvey Klein, Isidore J. Klein, Albert McLennan, George Norgan, Ellis Rosenberg, Maurice Haas as defendants, and Irving Koerner, William Rokoff and Harry Silver as co-conspirators, but not defendants, and with diverse other persons stated by the grand jury to have been unknown to them, to unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other, and with diverse other persons to the grand jury unknown, to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of Treasury in the collection of the revenue, to wit, income taxes.

Did you so conspire, Mr. Alprin? A. No, sir, I did not, with them or anybody else.

Q. It is further charged, in this surviving count of the indictment, that it was a part of the alleged conspiracy that the defendants, including yourself, would conceal and continue to conceal the nature of their business activities and the source and nature of their income.

[8505] Did you, Mr. Alprin, conceal and continue to conceal your business activity and the source and nature of your income? A. No, sir, I did not.

Q. It is further charged in this count that it was a part of the said conspiracy that the defendants named would file and cause to be filed with the District Collector of Internal Revenue, Brooklyn, New York, an individual federal tax return for yourself and your wife for the calendar year

1952, wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945 and 1946.

Did you cause to be filed, Mr. Alprin, a federal tax return for the year 1952 for you and your wife for the purpose of concealing the source and nature of the net income received by you during the years 1944, 1945, 1946 and 1947? A. No, sir, I did not.

Q. It is further alleged that it was a part of the conspiracy that the defendants named would file and cause to be filed by Irving Koerner, a co-conspirator, and his wife, for the calendar year [8506] 1942, a tax return wherein—for the year 1952—wherein certain net income of Irving Koerner and his wife was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

Did you have anything to do with the filing by Irving Koerner and his wife of the 1952 income tax return? A. No, sir, I did not. I did not know whether or not he even filed a return. I presume he did.

Q. It is alleged further that it was a part of the conspiracy that the defendants, including you, would file and cause to be filed with the Collector of Internal Revenue for the District of New York an individual federal income tax return for Albert Roer and his wife indicate for the calendar year 1950, where certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1956 and 1947.

Mr. Alprin, did you have anything to do with the filing or the preparation for filing of the [8507] tax return for the year 1950 of Albert Roer and his wife? A. No, sir, I did not. I had no knowledge of that return at all.

Q. It is finally alleged, as a part of the said conspiracy, that it was a part of the said conspiracy that the defendants, including you, would make and cause to be made entries in certain books and records of Tivoli Trading Company, a Panamanian corporation, for the purpose of concealing the nature and source of the income received by the defendants herein.

Mr. Alprin, did you ever make or cause to be made any entries in the books of the Tivoli Trading Company? A. No, sir, I did not. I never knew that there were books or had books until I saw them in this court.

Mr. Donohue: I have no further questions, your Honor.

Cross Examination by Mr. Bauman:

Q. Mr. Alprin, I should like, with the Court's permission, to read certain of your questions and answers of yesterday, and then inquire of you with [8508] relation to those questions and answers.

I am reading at page 8368 of the record:

"Q. With respect to what areas had an accord not been reached?"

And now you realize we are talking about the contract and the separation of the contract into two parts; is that correct? A. That is correct, sir.

Q. "A Well, there had been no accord reached with respect to the profit or the payments of commissions to the salesmen of R. C. Williams. There had been no accord reached with reference to the approval by Agencias of the wholesalers to whom it would sell or the quantities that it would sell them. There was no accord reached with reference to the 25 per cent that R. C. Williams wanted to take for itself in the State of New York and the metropolitan area of New York, and as later developed, there was no accord with reference to the place of payment.

"Q. Now had those matters been the subject of discussion at either of the, if I may characterize them as formal meetings which were attended by the principals on both sides which you have [8509] heretofore testified about?

"A. They were the subject of discussion at both conferences.

"Q. Was there ever a determination reached as to what would be done with respect to those matters that were so described by you? A. Well, at the second conference, in the course of general discussion, in order to get on with the proceedings and try to get the contract consummated as quickly as possible, Mr. Jacobs said that he would take up with his principals those questions and prepare them in a supplemental agreement, that is, a part of this agreement, but separate from it."

And now I just have two questions on 8381 I should like to read to you:

"Q. Will you tell us, Mr. Alprin, what was the reason for the separation of the contract into the contract and the supplemental agreement?"

And you started to answer by saying:

"A. It is not unusual in any—"

And then you were asked the question:

"Q. First tell us what the reason was in [8510] this case. A. The only reason was in so far as the basic agreement, if you can call it that, was concerned, the parties were all in agreement. As far as the supplemental agreement, they were still the subject of discussion."

Now you have head those questions and answers? A. Yes, sir.

Q. And those are the questions and answers you made; is that correct? A. Yes, sir.

Q. Those are the answers you made to the questions, do I understand, Mr. Alprin? A. Yes.

Q. Did I understand from your answers to those questions, Mr. Alprin, that you meant to convey to the Court and jury that the reason that that agreement was broken into two parts was that with respect to the first part there had been agreement between the parties? A. Yes, sir.

Q. And that with respect to those provisions appearing in the so-called supplementary agreement [8510a] of April 20th, Government's 5, the parties had not yet agreed? A. It was still under discussion.

Q. And that was the only reason, is that correct, for the separation of that agreement? A. That is correct.

[8511] Q. Do you remember being interrogated in the grand jury, Mr. Alprin, in connection with this matter? A. Yes, sir.

Q. Do you remember being asked this question and did you make this answer:

> "Q. Do you know who suggested that this contract be written in two parts? A. No. I think that the writing of the contract in two parts was an attempt to conform with the opinion given by Mr. Haas."

Were you asked that question and did you make that answer in the grand jury, Mr. Alprin? A. I don't remember whether I did, but if that is the minutes of the grand jury, I definitely did.

Q. In connection with the obtaining of the opinion, Mr. Alprin, would you please be good enough to repeat for me how the subject of obtaining an opinion from Mr. Haas came up or obtaining an opinion here in New York? A. The first opinion?

Q. Yes. A. At the second discussion between the principals, Mr. Klein asked me for an opinion as to the tax aspects of the transaction [8512] as related to the taxability of Distillers Agencies. I told him that I could not give him such an opinion, not being an expert in that subject, and recommended to him the firm of Haas, Schlesinger & Mayers, Mr. Haas.

Q. As a matter of fact, I think you have forgotten something and I shall read your answer of yesterday:

"A He said he had a tax opinion but wanted mine." Is that correct? A. That's correct.

Q. Do I understand your testimony to be that during this conversation Mr. Klein told you that he already had a tax opinion? A. I got the impression——

Q. Is that what he told you, sir? A. I couldn't give you the exact words, Mr. Bauman.

Q. Is that the substance of what he told you? A. The substance was that he had an opinion.

Q. Or to use your language of yesterday, he said he had a tax opinion. A. That would be a fair statement.

Q. Did he tell you whether that opinion was [8513] from J. Stanley Halperin? A. No, sir, I never heard that name before. I heard it for the first time in this courtroom.

Q. Did he tell you from whom he had obtained that first opinion? A. I have a hazy recollection that he said he had an opinion in Baltimore or from Baltimore. But I couldn't positively be sure about that.

Q. You have no doubt, do you, Mr. Alprin, that at the time you had this discussion with Mr. Klein, Mr. Klein told you he then already had another opinion, is that right? A. That is correct.

Q. In fact, he told you what that opinion was, did he not, Mr. Alprin? A. I don't recollect that he did.

Q. Did he tell you that he would not be subject to taxes in the United States pursuant to that opinion? A. I don't remember any such statement by Mr. Klein.

Q. May I ask you, were you asked this question in the grand jury and did make this answer:

"Q Did you ever discuss the possible tax [8514] ramification of this thing with Klein? A No, except his mentioning that he had received a tax opinion, his doing business through a Cuban corporation which was satisfactory and did not subject him to the taxes of the United States"?

A. That might be, Mr. Bauman.

Q. Did you make that answer, Mr. Alprin? A. I don't recollect it, but if those are the minutes of the grand jury, I most certainly did.

Q. Having read that to you, does that refresh your recollection as to whether Mr. Klein told you that? A. I honestly could not say, Mr. Bauman.

Q. Did you tell Mr. Haas at the time you communicated with him that Mr. Klein had a tax opinion which indicated that he would not be subject to United States taxes? A. I have no recollection of saying that to Mr. Haas.

Q. In any event, the time did come when you went to Mr. Haas and asked him to submit a tax opinion or to prepare a tax opinion based on what you submitted to him, is that right? A. I think I telephoned to Mr. Haas.

[8515] Q. You submitted to him a copy of Government's Exhibit 2A, which was the second of the drafts in evidence, is that right? A. That is correct.

Q. And that draft, Exhibit 2A, did not have within it the provisions which later appeared in paragraphs 1 and 2 of the supplemental letter, is that right? A. That's correct, because the provisions of the supplemental agreement were

not in being at that time, that is, in written form. Or they may have been that day, I don't remember—no, sir, they could not have been in existence at that time and they were not in existence at that time.

Q. These provisions were later agreed upon by the parties, is that right? A. That is correct.

Q. And they were put—— A. With some modification.

Q. Yes. A. I think paragraphs 4 and 5 were added.

Q. There were some provisions—I don't mean to cut you off, Mr. Alprin. If you want to continue, go ahead. A. When you say these provisions——

[8516] Q. What I meant was the provisions of Government's Exhibit 5, paragraphs 1 and 2 were subsequently agreed upon, because they were signed by both parties, is that correct? A. That is correct.

Q. Did you at any time after that contract was signed or that part of it was executed send that supplementary agreement over to Mr. Haas or call its provisions to his attention? A. No, sir, I did not.

Q. I believe you said yesterday that you decided that those provisions were not important enough to ask Mr. Haas about, in substance, I am not attempting to quote your language, Mr. Alprin. A. After I read Mr. Haas' draft of the opinion and the opinion itself, it was practically for all basic purposes the same as the draft, except with the recommendation as to what should specifically be done with respect to the contract, I saw that the opinion was hinged and based upon one important fact, as decided by two cases of the Circuit Court of Appeals, and that was the place where title passed. None of those provisions had anything to do with the place where title passed.

[8517] Q. So you took it upon yourself, Mr. Alprin, to decide that those provisions were such a lack of consequence that you would not call it to the attention of tax counsel, is that right? A. On the basis of the opinion as I read it from Mr. Haas.

Q. Although in that opinion, Mr. Alprin, this concluding sentence appears:

> "With the foregoing amendment to the contract it is my opinion that the Cuban corporation would be considered a non-resident foreign corporation, not doing business within the United States and therefore not subject to tax on its profits."

Is that correct? A. That is what it says.

Q. You assumed from the fact that title was to pass in Canada that it would not be doing business here, is that correct? A. That's correct.

Q. In the grand jury were you asked this question and did you make this answer:

> "Q. As a lawyer, do you think it would make any difference that the foreign corporation or the [8518] officers of the foreign corporation had the power to appoint salesmen and brokers? A. I don't have any answer to your question. I can't give you an opinion because, as I say, I am not a tax man now, and I don't know tax law"? A. Yes.

Q. Is that the answer you made? A. I think so.

Q. You nonetheless said that you deliberately did not send these letters to Mr. Haas because in your judgment

they were unimportant? A. Because they had no bearing on the question as he raised it.

Q. A time came about a year later when it was decided to obtain another opinion from Mr. Haas, is that correct? A. That's correct.

The Court: I think we will interrupt for a ten-minute recess.

(Short recess.)

[8519] Q. I believe I was discussing with you the second opinion in 1945—— A. That is correct.

Q. —at the recess, Mr. Alprin, and I would like you to tell me, please, the circumstances under which you obtained that opinion of 1945. A. Mr. Klein communicated with me, I think by telephone, and said that he was preparing for his tax return and that there was a question of whether or not the functions of preparing invoices in Baltimore and submitting documents by personnel here to the banks against the letters of credit would constitute the doing of business to affect taxability of Agencias, and asked me to communicate with Mr. Haas and get his opinion on it, which I did.

Q. And you, too, were concerned about whether or not Mr. Klein's activities were not such as would subject his corporations to taxation in the United States, were you not, Mr. Alprin? A. At that time?

Q. Yes. A. The question did not arise in my mind, except that Mr. Klein made the inquiry.

Q. But aside from that, and before that, it [8520] never had occurred to you; is that right? A. No, sir.

Q. Now, you then contacted Mr. Haas? A. That is correct.

Q. And did you send him a copy of the formalized agreement? A. He asked for it and I sent it to him.

Q. At that time, Mr. Alprin, you did have, in its final form, a copy of Government's Exhibit 5, the supplemental agreement of the 20th, didn't you? A. That is correct.

Q. And when Mr. Haas asked you to send him a copy of the contract, you only sent him Government's Exhibit 4; is that right? A. That is correct.

Q. And that was in spite of the fact that Mr. Klein had indicated to you that he was concerned about an area other than where title to the whiskey passed; is that right? A. One particular area, Mr. Bauman.

Q. And because he did not specify, because he did not specify the precise provisions of the supplementary agreement, you did not think it was important enough to send that supplementary agreement [8521] to Mr. Haas in order to obtain this opinion, Government's Exhibit 358; is that correct? A. That is not entirely correct, Mr. Bauman. May I give my answer?

Q. Please do. A. Mr. Klein asked with reference to one specific matter, the preparation and submission of documents to banks in New York as to whether or not that constituted taxability, and that is the question that I propounded to Mr. Haas.

The other matters in the supplemental agreement had nothing to do with that particular question. The other matters had nothing to do with activities in the United States as I knew them.

Q. The question was banking activities. A. That is right, banking and the preparation of invoices.

Q. His invoicing and banking activities? A. That's right.

Q. As I understand it then—and I just want to resolve this question clearly, if I may, with the Court's permission—you understood Mr. Klein to ask you to get an opinion with relation to the taxability of his corporations in the light of his invoicing and [8522] banking activities; is that right? A. That is correct.

Q. And that was the only question that you submitted to Mr. Haas? A. That is correct.

Q. And thereafter did you see the opinion of February 27, 1945, Government's 358? A. I did, sir.

Q. When did you see it? A. I don't know the exact time. Sometime after it was prepared by Mr. Haas, possibly a few days or a week, whatever it was.

Q. Did I understand you to say—and correct me if I am wrong, Mr. Alprin—that the original of that opinion, 358, was sent to Mr. Klein in Baltimore and a copy was sent to you at your office? A. I think so. That is my best recollection.

Q. And when you received that opinion, Government's 358, you read it, didn't you? A. I certainly did.

Q. And you read the last paragraph too; is that correct? A. I read every paragraph.

[8523] Q. And you read that part of it that said:

> "Let me state further as a practical matter that if instead of just performing the functions I described above"—namely, invoicing and banking—"your president is in fact doing your business here,

such as supervising the carrying out of your agreement with Williams, supervising the shipment of merchandise from Harwood to Williams, and caring for the multitude of details which must be involved in these transactions, then you are doing business here and subject to tax here."

A. I read that.

Q. And when you read that, did you then decide to take Government's Exhibit 5, which is the supplementary agreement of the 20th, and send that to Mr. Haas? A. No, sir. May I see that opinion for a minute, please?

Q. Yes, sir, sure.

Mr. Bauman: I will wait, sir, until Mr. Alprin has finished reading.

A. Mr. Bauman.

Q. Yes, sir? [8524] A. May I comment on this, in the light of——

Q. Perfectly all right with me, if the Court will permit it.

The Court: Surely.

A. As an attorney, in reading an opinion, I was basing my thoughts on this particular, or this paragraph, and particularly this part of it.

After citing some cases, Mr. Haas states:

"In applying this principle to your case, it is obvious that your purpose for existence is the sale of whiskey, that once the whiskey is sold you have accomplished that purpose. Anything which may be

done thereafter which is not in furtherance of that purpose would not constitute a part of your essential activities."

Q. And when you got to the last paragraph, where it talked about caring for the multitude of details which must be involved in these transactions, that did not raise a red flag in your mind to the effect that you ought to send Mr. Haas a copy of Government's Exhibit 5; is that right? A. It did not, because those items in the supplemental agreement had nothing to do with the sale of whiskey. As I interpreted Mr. Haas' last [8525] paragraph, any activities of Mr. Klein that had anything to do with the sale of whiskey might have made the corporations subject to tax.

Q. And the approval of the distributors, in your opinion, had nothing to do with the sale of whiskey; is that right? A. No, because the sale, in so far as the foreign corporation was concerned, was consummated when title passed f.o.b. Vancouver. The other sales were the sales of Williams to wholesalers in this country.

[8526] Q. Would you just respond to my question, Mr. Alprin. A. Yes, sir.

Q. The provision of the contract which required or which was to the effect that Agencias Destiladores was to have the right of approval of wholesalers selected by Williams did not occur to you to be one of the multitude of details that Mr. Haas was talking about, is that correct? A. No, sir, because I knew the background of that which was not brought out too completely in this trial.

Q. The provisions of the contract which were to the effect that Agencias Destiladores was to have the right of

approval of all sales representatives were to receive 60 cents a case did not strike you as being one of the multitude of details that might fall within the last paragraph of the opinion? A. No, sir, for the same reason that I gave you in your previous question.

Q. With relation to——

The Court: Excuse me, we may not all fully understand the processes that went on in your mind, Mr. Alprin, because, after all, that is what Mr. Bauman is inquiring about when he asks what you thought and what occurred to you. You recognized in your mind a [8527] distinction between the completed sale by the supplier to the agent, i.e., by Agencias Destiladores and subsequently Ramsey Scott to R. C. Williams, as distinguished from what R. C. Williams might have subsequently done with the whiskey, either sold it or thrown it in the sewer, is that the point?

The Witness: That is exactly what I have been trying to convey to Mr. Bauman.

The Court: I just wanted to be sure we all understood what you were trying to say. One was the sale by the supplier to the agent and the other was the sale by the agent to the wholesaler for resale to a retailer.

The Witness: Exactly.

The Court: Your process of thought was that in so far as the sale involved in these contracts, namely, from Agencias Destiladores or Ramsey Scott to R. C. Williams, that the references in the last paragraph of the Haas opinion had no applica-

tion to that and that the designation of the wholesalers who might get the merchandise or the designation of the salesmen or brokers who might get the commission arose in connection with the subsequent sale by R. C. Williams to its customers, and had nothing to do with the sale by Agencias [8528] to R. C. Williams; is that your point?

The Witness: That is exactly correct. That is what I have been trying to convey to Mr. Bauman.

By Mr. Bauman:

Q. Your thought was, as I understood your answers to the Judge's questions, that whatever powers were reserved to Agencias Destiladores under the terms of the April 20th supplementary agreement had nothing to do with what Mr. Haas was talking about in the fifth paragraph of his opinion, is that right? A. Generally, yes, sir.

Q. That agreement, Government's Exhibit 5, provided in its fifth paragraph all payments for merchandise are to be made in New York City. A. Yes, sir.

Q. And that of course had nothing to do with the relationships between R. C. Williams and Agencias Destiladores in the sale of merchandise, did it? A. Yes, sir, and that provision I believe was in the agreement or in the draft of the agreement which I forwarded to Mr. Haas. I think it is commented on in his first opinion. If you let me have it, I think I can point it out to you.

Q. I will accept your word that is so. So [8529] that was the only provision which was in that supplementary agreement which in your construction called for or had any applicability—I will withdraw it.

Let us come back to the 60 cents per case arrangement.

A. All right.

Q. Mr. Alprin, has R. C. Williams ever been a client of yours? A. Yes, sir.

Q. That is what you said, is it not, at page 8343 of the record? You were talking about a meeting and you said:

> "A Mr. Jaburg was the president, I was told, of R. C. Williams. Mr. Jacobs, its counsel, whom I had known before in working for R. C. Williams, as a client of mine and also as a member of the Association."

A. That's correct.

Q. So that they were a client of yours aside from membership in the Association? A. Yes. I did some legal work for them. I obtained a refund from Seagram Distillers of a considerable amount of money for which they paid me a fee.

Q. Were you asked this question in the grand jury and did you make this answer:

> "Q. Were you ever engaged as counsel by R. C. [8530] Williams & Company? A No, sir."

Did you make that answer in the grand jury? A. If those are the minutes of the grand jury, I made that answer. But since the grand jury I have had an opportunity in the preparation of this case to go through all my files and every scrap of paper I could lay my hands on, and I found I did do work of R. C. Williams and received a fee from them.

Q. You were mistaken when you made that statement to the grand jury? A. Undoubtedly. I didn't remember the incident at that time.

Q. When did you make that answer in the grand jury? A. May 5th or 6th.

Q. 1954? A. That's correct.

Q. Did you make that answer to the grand jury? A. If those are the minutes of the grand jury, I undoubtedly did.

Q. Do you remember making that answer? A. I don't remember. I undoubtedly did.

Q. If you did make that answer, you were mistaken and you subsequently found out you were mistaken? A. Yes.

Q. You told us generally yesterday, Mr. Alprin, [8531] about your discussing with Mr. Klein, wherein you talked about your getting the commissions on the sales in the metropolitan area from R. C. Williams. You remember that conversation about which you testified yesterday? A. Yes, sir.

Q. I would like you to tell me, please, what you said to Mr. Klein and what Mr. Klein said to you about that subject in that conversation. A. The substance of it was in the work I was doing in connection with an agreement and the problems that came up during the year 1944 inured to the benefit of R. C. Williams and Agencias, and the general discussion along those lines. I think it was at Mr. Klein's suggestion that I took up with R. C. Williams the question of——

The Court: All Mr. Bauman asked you was the conversation between you and Mr. Klein. Just confine your answer to that.

The Witness: I am sorry, your Honor.

Mr. Bauman: May I ask the question a little more directly, your Honor?

The Court: I think you asked it directly enough. Do you want the question read back?

The Witness: He was asking about the [8532] conversation I had with Mr. Klein at that time.

The Court: Yes.

Did you wish to say something, Mr. Bender?

Mr. Bender: I wish to note my objection to this conversation at least as far as the defendant Haas is concerned. It is not binding as to him.

The Court: Sustained.

Q. Go ahead, Mr. Alprin. A. Mr. Klein suggested that I take it up with R. C. Williams, that there was an area within which they could compensate me since they were making a profit of $8 a case on sale to retailers, that there was no salesman assigned to that particular portion of the business, it was their own operation in sales to retailers, that they were their own wholesaler.

Q. This is what Mr. Klein told you? A. Yes. And there was an area of 60 cents I could be paid. I said, "That is a good idea." Then, as I said, laughingly I said, "If I get it, I will give you a third of it."

Q. What did Mr. Klein say to that? A. Nothing.

Q. Did Mr. Klein say anything to you about that at all? A. I don't recollect it.

[8533] Q. Did Mr. Klein in answer to your statement say, "I can spend some money"? A. I don't recollect it.

Q. I am asking you, did you have this conversation with Mr. Klein—excuse me. A. I am sorry for interrupting you, Mr. Bauman.

Q. Did you tell Mr. Klein, "Well, if I get it, I will give you a third of it" and in response to that did Mr. Klein say, "Well, I can spend some money"? A. I have no recollection of him saying that.

Q. So I take it that Mr. Klein did respond to you in that conversation when you said, "Well, if I get it, I will give you a third of it"? A. I have no recollection of his answering that or saying anything.

Q. But that is substantially what you did say to him, Mr. Alprin, is that correct? A. That's right.

Q. "Well, if I will get it, I will give you a third of it"? A. That's right.

Mr. Bauman: May I approach the bench a moment with counsel, your Honor?

The Court: Surely.

(Discussion off the record at the bench.)

[8534] *By Mr. Bauman:*

Q. Mr. Alprin, were you asked these questions in the grand jury and did you make these answers

"Q. Did you ever receive any commissions for the sale of Harwood Whiskey? A. I received some money from R. C. Williams which was not commissions. I will tell you how that came about.

"Q. Please do. A. In the draft of the agreement and later in the supplemental agreement you will note that R. C. Williams desired to have a certain proportion, I think it was 12½ per cent, for sales

to retailers in metropolitan New York, and 12½ per cent to wholesalers in the State of New York, which they later waived. And about the time that Klein told me to bill John Dunbar, he said, 'You know the sales that R. C. Williams make to retailers in New York they make their wholesalers' profit on, that is, there was a 15 per cent markup pursuant to OPA, an established custom in the trade, on which the OPA order was based. They make a 15 per cent markup on cost, which is about $7 a case, less the expenses for their salesmen, who get about 3½, 4% per cent pursuant to union contract, general overhead and delivery expense.' He said, 'There [8535] is no broker or agent or collector of 60 cents on those sales.'"

A. That's correct.

Q. "'They are keeping that themselves.' He said, 'I think we ought to go over to R. C. Williams and get that money, since you are doing a lot of work for the deal that helps them, that they have benefited by.'"

Then you went on to say, "Every time an ad came out of a competitor to the company we had to go down to Washington and straighten that out. There was a complaint," and you went on to discuss—— A. Every time an ad came out on Harwood a competitor complained.

Q. Were you asked that question and did you make that answer? A. Yes, I did.

[8536] Q. And is that what Mr. Klein said, "I think we ought to go over to R. C. Williams and get that money"? A. That is a misstatement of fact. He did not say, "We go over to R. C. Williams." Either I was mistaken or I said

it incorrectly or it was taken incorrectly, but that is not a statement of fact.

Q. At any event, what you said in the grand jury is not correct? A. In that regard it is not.

Q. In that regard? A. That's correct.

Q. I believe you corrected yourself:

> "Was this as a representative of Klein? A. No: Klein says"—and this is in quotes—" 'you ought to go over and get that 60 cents.' "

A. Well, I don't know about the quotes. He said I should take it up with R. C. Williams and discuss it with them. There was an area of 60 cents within which I can be paid.

Q. Yes, and were you asked this question, and did you make this answer:

> "Q. I mean this work you were doing. A. That was on behalf of Klein's company. I says, 'Well, if I get it I will give you a third of it,' laughing. He says, 'I mean it. Go over there [8537] and get it.' "

Then you went on to say you discussed it, with Koerner and he said it was all right, and Jacobs said it was all right, and so forth.

Were you asked that question and did you make that part of the answer which I read? A. If those are the minutes of the grand jury I undoubtedly did. I don't question them.

Q. And what you did say to him was, "Well, if I get it, I will give you a third of it," laughing? A. Yes.

Q. You didn't say "laughing," but you were laughing when you said that? A. I was laughing when I said it, or did I say "laughing"?

Q. You said "laughing," but I thought you meant to indicate that at the time you said it you were laughing; correct me if I am wrong.

The Court: Said it where, to Klein or to the grand jury?

Q. Let me rephrase it.

The Court: Well, is the word "laughing" in parentheses?

Mr. Bauman: No, it is not.

[8538] The Court: Well then he used the word.

Mr. Bauman: Right.

The Court: He was reciting the fact that when he told it to Klein he was laughing.

Mr. Bauman: That was my understanding.

The Witness: That's right.

The Court: Yes; all right.

Q. And did Klein say to you, "I mean it; go over there and get it?" A. I don't recollect that. He did say that I should get it from R. C. Williams, I should take it up with them to get it.

Q. But other than that you don't recollect the facts as being as I have stated them to you? A. I do recollect the facts as you state to me with the exception of those corrections that I made.

Q. May I ask you, sir, did you tell the grand jury that Klein said, "I mean it, go over there and get it"? A. I repeat, Mr. Bauman, if those are the minutes of the grand jury I said it. I am not questioning that I said it. I have no recollection of saying it.

Q. Now, in that same conversation, or in connection with that same conversation were you asked this question [8539] and did you make this answer:

> "You originally said, I think, that you offered to give Klein a third of it and did it jokingly. A. That's right.
>
> "Q. Did he pick you up on it? A. He said, 'I can spend some money', something in a jocular vein?"

Did Mr. Klein say that to you? A. I have no recollection of it, but in the light of our discussion along that line in a humorous vein he may have. I don't remember.

Q. Did you make that answer to the grand jury, Mr. Alprin? A. Again, Mr. Bauman, if those are the minutes of the grand jury I don't deny that I said it.

Q. Do you deny making that answer to the grand jury? A. I have no recollection except the general way that I was asked a lot of questions in the grand jury and I tried to answer them to the best of my recollection at the time without having refreshed my recollection on any of the questions that they asked.

Q. But you don't remember being asked this question and having made this answer, is that correct? [8540] A. Not that specific question.

Q. But you don't deny that you made that answer? A. As I say, if those are the minutes of the grand jury I don't deny it.

Q. And aside from that one transaction, or one or two transactions about which you have told us, which you discovered after you had told the grand jury that you had never represented Williams, you did not, on any other

occasion, represent Williams, is that right, Mr. Alprin? A. On a client-attorney basis? I did represent Williams——

Q. I don't mean as a member of the Association. I mean as an attorney. A. No, I did not, except that the work that I was doing was legal services for R. C. Williams, and I held myself out as their attorney, and on one occasion that I can recollect Mr. Koerner wired to the Alcohol Tax Unit, Mr. John Huntington, "pursuant to conference with our attorney, Mr. Alprin," on the occasion of the detention of those 23 cars.

Q. Were you retained as an attorney by R. C. Williams? A. That is difficult to answer, Mr. Bauman. I had no written retainer, I had an oral [8541] understanding with Mr. Jacobs that as the problems came up I should take care of them and to take them up with him if I thought they merited his attention, if they were questions of policy of R. C. Williams. If they were just matters that came up, that had to be taken care of with the Alcohol Tax Unit, with the various agencies that controlled the sale and distribution of alcoholic beverages, I am proud to think that he had enough faith and confidence in me that I could take care of them, and he asked me to do, and I have letters along those lines.

Q. Mr. Alprin, you did not, in fact, represent R. C. Williams, did you, in this matter? A. In which matter, Mr. Bauman?

Q. In the Harwood matter? A. In which aspect of the Harwood matter, Mr. Bauman? I did not represent them in the drawing of the agreement. I represented them on many occasions in the carrying out of that agreement in

so far as their functions were concerned in the sale of the merchandise.

Q. Isn't the fact more nearly this, Mr. Alprin, that you were the attorney for these various Panamanian, or rather for Agencias Destiladores? [8542] A. That is the only one of which I was attorney.

Q. And Williams obtained some incidental benefit from your services and Mr. Klein suggested that since—Mr. Klein or you suggested that since they were the incidental beneficiary of your services that you ought to go over there and get the 60 cents a case? A. That is not entirely correct, Mr. Bauman.

Q. Now, in the middle of May, 1946, Mr. Alprin, I understood you to have said that Mr. Klein suggested that you form four corporations? A. That's correct, sir.

Q. And did I understand you to say why it was the number four was picked on by Mr. Klein as being the fact that there were four members of your family? A. Well, he said, "Form corporations for members of your family," and then in the course of conversation he said, "four."

Now, whether he associated "four" because there were four members of my family, I don't know. I thought so.

Q. Oh, you understood Mr. Klein's statement to be, "Form one for each member of your family," is that right? A. That was the assumption I had. He said, "You form corporations," and then he suggested I [8543] form four, and I attributed the number four with the number of the members of my family, correctly or incorrectly.

Q. And he told you to work out the details and make arrangements with Ellis Rosenberg? A. That's correct.

Q. Who was it who told you for the first time that Roer and Koerner were going to be down there at the same time? A. I don't remember whether it was Mr. Klein who mentioned it in that conversation that he was giving them the same opportunity, or Mr. Rosenberg, when he discussed it with me in making arrangements about going down.

Q. Now, was it at that time—I know you have testified that in 1945 up in Vancouver—and correct me if I am wrong—that Mr. Klein said something to you about taking you into the family; is that right? A. That's correct, sir.

Q. And did he again say something to you about taking you into the family in 1946, in June, when he was talking to you about corporations? A. Well, I don't remember whether he used the words "member of the family" at that time.

[8544] He said, "We'll give you an opportunity of having agencies in Central and South America or other parts of the world."

Q. Did Mr. Klein ever tell you that he had taken Koerner into the family? A. No, sir.

Q. Did he ever tell you that he had taken Roer into the family? A. Not at that time, no, sir.

[8545] Q. Now who was it who told you first that Mr. Koerner and Mr. Roer were going to be in Havana at about the same time, at the same time as you? A. As I said, Mr. Bauman, I don't remember whether it was Mr. Klein or Mr. Rosenberg.

Q. It was not Mr. Roer or Mr. Koerner, to the best of your recollection? A. No, sir.

Q. And did Mr. Klein or Mr. Rosenberg, whoever it was who told you about that, tell you that they were going to be

there to form corporations? A. Well, that developed in my conversations with Mr. Rosenberg in trying to fix the time of going down.

Q. And I understand in that connection that within a month of your first conversation with Mr. Klein, wherein he asked you to form these corporations, Mr. Rosenberg called to find out when you were going to be in Cuba, and that you arranged to be there when Ellis Rosenberg was going to be there; is that right? A. Wait a minute.

The Witness: Will you reread that question.

[8546] Q. Mr. Klein spoke with you in the middle of May about forming corporations; is that correct? A. That is correct.

The Court: Just a moment. Are you withdrawing the other question?

Mr. Bauman: Yes, sir; with the Court's permission, I will.

Q. How soon after that did you hear from Ellis Rosenberg? A. Within one or two weeks.

Q. And was that sometime in June? A. About the end of May or June; early June.

Q. And did Mr. Rosenberg at that time ask you when you were going to be in Cuba in connection with the formation of these corporations? A. He asked me that with a lot of other questions.

Q. What were the other questions? A. He said that Mr. Klein had told him about our discussion; he wanted to discuss with me the time of going down so he could make arrangements to be there at the same time that I was going

to be there and he wanted to set his time schedule to conform with mine, and later with Koerner's and Roer's.

[8547] Q. Now before you left for Cuba, did you see Roer or Koerner or did you talk to them on the telephone? A. I think I did.

Q. And did each of them tell you he was going down there? A. Yes, sir.

Q. Did each of them tell you that he was going down to form corporations? A. Yes, sir.

Q. Did each of them tell you that Klein had told them to go down there to form corporations?

Mr. Kiendl: I object to that, if your Honor please, not binding.

The Court: Sustained.

A. I think so. I don't remember. I know that——

Q. You don't remember that? A. I remember the discussions generally were to try to set up the time for us to all be together, to set up our times respectively so that we will all be there together at one time, and I think in the course of conversation the question of the Cuban corporations was discussed.

Q. Did each of them tell you that he was going [8548] down to form four corporations, too, before you went down? A. I have no recollection of a discussion about the number of corporations.

Q. I believe you testified that when you got down there you went to Dr. Moran's office and Dr. de Cubas took you over to see Dr. Valverde; is that right? A. That is correct.

Q. And I believe that you and Roer and Koerner discussed with Dr. Valverde the corporate setup of these cor-

porations you were forming; is that correct? A. No, sir, we did not, because they did not go to Dr. Valverde's office. It was I who went to him in the first instance. I think that discussion——

Q. Then you went over there and you discussed with Dr. Valverde the corporate setup of the corporations that all of you contemplated; is that right? A. Will you let me finish.

I think that discussion was had primarily between Mr. Rosenberg with Mr. Valverde.

Q. And you were there? [8549] A. Yes, sir, I was.

Q. And you participated in that discussion? A. I don't know the extent. I was there.

Q. Did I understand you to say that four or five days passed before the papers were ready, Mr. Alprin? A. I think so. My best recollection is of a lapsed time.

Q. Pardon, have you finished? A. That's right.

Q. You heard Dr. Valverde testify in this courtroom, haven't you? A. Yes, sir.

Q. You heard Dr. Valverde say that—correct me if I am wrong—Dr. de Cubas brought you and Roer and Koerner over to his office; that in fact at the time you three came over to Dr. Valverde's office the corporate papers had already been prepared in Dr. de Cubas' office; did you hear that? A. I heard him say that, but that refers to a second meeting, not a first one. That was the time we came over to sign all the papers required by Mr. Valverde—by Dr. Valverde.

Q. I understand, Mr. Alprin, that you went down and saw Valverde; that that night you and your [8550] fam-

thes and Valverde and his wife had dinner together? A. I think we did, and Mr. Suarez and his lady friend.

Q. Yes. A. Dr. Suarez.

Q. And the following morning the papers were notarized, the papers of all your corporations were notarized before a Cuban notary; is that right? A. I didn't know that.

Q. That there was no five-day or four-day lapse for the preparation of these papers; that in fact they were prepared by de Cubas, brought over to Valverde, agreed upon, that day you went to dinner with Valverde and his partner and their companions, and the following day the Cuban corporations were formalized by having the attorneys appear before a Cuban notary? A. That is not so, and may I have the exhibit of any one of my corporations to fix the date?

Mr. Bauman: I am handing the defendant Defendant Alprin's E1.

A. Do you have the deed of the corporation?

Q. I just obtained that from your counsel, Mr. [8551] Alprin. I did not stop to look at what it was. A. I think you have them. This does not show a certification before a notary, and this gives a date of June 30th. We were there—I think we arrived there on June 24th or June 25th.

Q. Now, thereafter— A. Pardon me, Mr. Bauman—and it is not my certification, it is Dr. Abril's.

Q. Well, I did not say it was your certification, Mr. Alprin. A. Oh, I am sorry.

The Court: May I see that a moment, please?
The Witness: Certainly.

By Mr. Bauman:

Q. I show you a copy of Defendant Alprin's FN-1, 2 and 3, which is a list of the 12 corporations. A. Yes, sir.

Q. And you say that was a typewritten list you made later from your original notes; is that right? A. That is correct, sir. Incidentally, Mr. Bauman; in order to answer the previous question, this shows the deed on June 29, 1940, before a notary public of Havana, by Dr. Miro y Calonge, whom I do not [8552] know.

Q. Well, now, will you answer the question I have just asked. A. What was the question?

(Question and answer read.)

Q. Where is the original list? A. I don't know, sir. The original list was a list, was a sheet or sheets prepared by Mr. Rosenberg, from which I copied, and from that copy these were typewritten, Exhibit FN-3.

Q. And you don't know what happened to the original that you made at the time; is that right, sir? A. No, sir.

Q. Did you give a list to Rosenberg, a copy of the list to Rosenberg? A. No, sir, I don't believe I did. He had it. There is no purpose in me giving him a list.

Q. Did you give Mr. Klein a copy of the list? A. I think I did at sometime.

Q. You think you did? A. Yes, sir. My recollection is that I did.

Q. Were you asked these questions in the grand jury and did you make these answers, Mr. Alprin:

"Q. And when you returned to the United [8553] States did you have any discussion with

Klein with respect to those corporations? A. Yes. I told him we had formed them and we were waiting his word whenever he would be ready"?

A. That is correct.

Q. You remember being asked that question and making that answer? A. Yes, sir.

Q. Do you remember being asked this question and making this answer:

"Q. And did you give him the names of the corporations? A. Well, Mr. Rosenberg took the names of all the corporations while we were down there, and later Mr. Klein asked for a list of the corporations, which I gave him"?

Were you asked that question and did you make that answer? A. If those are the questions and answers in the minutes of the grand jury proceeding, I made them.

Q. Do you remember making that answer? A. I say if——

Q. I heard what you said. I am asking do [8554] you remember making that answer? A. I don't remember making any of the answers, any specific answer, Mr. Bauman. I remember answering questions generally about the subject matter that I was asked about.

Q. I understood you to say, sir, about the question just previous, when I asked you about that question "Do you remember being asked that question and did you make that answer," and I remember your saying to me, "Yes."

Now is that correct? A. Your statement is correct. I qualify it by saying I remember some general areas of examination. That was one of the areas of examination.

Q. And when you said that you remembered the previous question and answer, you did not actually remember the previous question and answer; is that right, Mr. Alprin? A. Not as a specific question and answer. I remember the area of examination.

Q. And you do remember being examined about whether Mr. Klein asked you for a list of your corporations; is that right? A. I remember that they asked me specifically [8555] or generally, I should say, with respect to the Cuban corporations.

Q. Yes, and do you remember telling them—you are right; I want to withdraw the inference in that question.

You do remember telling them, Mr. Alprin, that you gave Mr. Klein a copy of the list of the corporations, don't you? A. I don't remember that particular answer, Mr. Bauman.

Q. Well, I am not now asking you about that particular answer. I am asking you, sir, do you remember telling the grand jury, not this particular answer, but whether Mr. Klein asked for a list of the corporations, which you gave him? A. Would you repeat that question.

Q. I will repeat it for you.

Do you remember telling the grand jury that Mr. Klein asked for a list of the corporations, which you gave him? A. I don't remember telling the grand jury that specific answer. I remember generally an inquiry with regard to that area, and I answered to the best of my recollection at that time.

[8556] Q. What is your present recollection, Mr. Alprin, as to whether Mr. Klein asked you for a list of the corporations which were formed in Havana? A. I don't remember whether he asked me. I remember giving them

to him, but I don't remember whether it was pursuant to his request or my giving them to him; I couldn't say particularly, exactly.

Q. You have no doubt, do you, that you did in fact give him a list of the corporations that were formed in Havana? A. That I recollect.

Q. Clearly? A. Clearly.

[8557] Q. A list of all twelve of them? A. I don't know whether it was twelve or four, mine or all.

Q. So that you cannot tell us whether you gave him a list of Koerner's corporations or Roer's corporations, is that right? A. That's correct.

Q. However, you are sure you gave him a list of your corporations? A. That's correct. I don't remember how many pages I handed him. I remember giving him the list and I remember my corporations being on it, because they were on top. How many pages there were attached to it, that is the reason I can't definitely say, whether they were all twelve or just the four.

Q. What is your best recollection? A. I have no recollection, because I am not sure.

Q. Who determined the names of these corporations, Mr. Alprin? A. Dr. Valverde.

Q. Some time later in March 1947 the time came when Mr. Klein gave you a check for $264,000, right, a bank draft? [8558] A. That's correct.

Q. Under the circumstances which you outlined, is that right? A. That's right.

Q. Did I understand you to say, Mr. Alprin, that when you came into Mr. Klein's office on this occasion, there were two people in this room, his own room? A. I think

that when I was in his room, of course I came into the outer office first, but I think when I was in his private office that Mr. Rosenberg and Mr. Rokoff or one of them was there.

Q. It was for that reason that you and he went into this washroom that you testified about? A. I presume so, I don't know what was in Mr. Klein's mind when he took me in there.

Q. You and he went into this washroom? A. That's correct.

Q. And he gave you this check? A. Two drafts.

Q. Two drafts? A. Yes.

Q. Did you sign anything while you were in there? A. I don't recollect, although Mr. Rosenberg [8559] reminded me that I signed——

Mr. Kiendl: We object to anything Mr. Rosenberg reminded him as not binding on the defendant Klein.

The Court: Sustained.

A. (Continuing) —signed a letter document, a letter page document, at or about that time. I have no recollection of signing anything at the time.

Q. That draft of $264,000-odd, Mr. Alprin, do you know how that amount was computed? A. I certainly do not.

Q. You have no idea of how the odd dollars and cents were computed, is that right? A. That's right.

Q. Did Mr. Klein ever tell you that you were going to get a certain amount of money based upon the total number of cases sold either nationwide or locally? A. No, sir.

Q. When Mr. Klein gave you that check he said that under no circumstances were you to give Koerner his check, is that right? A. Until he instructed me to do so.

Q. Did Mr. Klein tell you on that occasion that he did not trust Koerner? [8500] A. I have no recollection of any such statement.

Q. Did you ever tell Mr. Haas that Mr. Klein said he did not trust Koerner? A. I don't recollect anything like that, except possibly saying that Klein showed his trust in me rather than Koerner by giving me Koerner's draft.

Q. More particularly I want to ask you specifically whether Klein at that time told you, at the time he gave you the draft for $204,000, two of them, "Hold on to this, don't give it to Koerner under any circumstances until I give you the word, I don't trust Koerner"? A. He didn't say "I don't trust Koerner" that I recollect.

Q. Do you know why it was that Klein made out your check as well as Koerner's to Economica Agencias? A. I don't know what was in his mind. I never requested it.

Q. You did not request it? A. I did not.

Q. To your knowledge did Koerner ever request it? A. Not to my knowledge.

Q. Did Koerner ever ask you to have his draft made out to your corporation? [8501] A. No, sir, it was only a headache to me.

Q. I just asked you did Koerner ask you to have his draft made out to your corporation? A. Did Koerner ask me?

Q. To have his draft made out to your corporation. A. Did he ask me?

Q. Yes. A. No, sir, he did not.

Q. You got those two drafts, one of yours and one of Koerner's and you went back to New York? A. Yes, sir.

Q. The same night? A. The same afternoon or evening.

Q. Did you call Koerner when you got back? A. I did.

Q. What did you say to him? A. I told him I received a draft from Mr. Klein, which Mr. Klein told me was for him——

Mr. Kiendl: Objected to as to defendant Klein.

The Court: Sustained.

A. (Continuing) —which Mr. Klein told me was for Koerner, and that the check was made out to my corporation and I was holding it subject to Klein's [8562] instructions.

Q. What did Koerner say? A. He said all right.

Q. Did you discuss why it was made out to your corporation? A. I don't recall that we did.

Q. Did he say he wanted the money right then? A. No.

Q. He just said "All right"? A. I think so. I don't remember the entire conversation, but the import of it was that he was agreeable.

Q. Didn't Mr. Koerner tell you that he had a few corporations of his own and he wanted his draft made out to his corporation's name? A. He did not tell me that.

The Court: While whatever it is you seek is being found, Mr. Bauman, I would like to ask Mr. Alprin some questions.

By the Court:

Q. Going back to the time you were in Cuba with Dr. Valverde, do you recall, Mr. Alprin, when you arrived there? Was it June 1946? A. It was June 1946, yes, sir.

[8563] Q. Do you recall when you arrived there? This deed appears to indicate a certification, and I am handing you what exhibit number (handing to witness)? A. Defendant Alprin's EI.

Q. It seems to indicate that Valverde and Suarez appeared before a notary for the formalization of the corporation on June 29, 1946, is that correct? A. That's correct.

Q. And that indicates that the certification of incorporation and by-laws was made by Valverde on June 30, 1946, is that correct? That would be the last line of the last page, or thereabouts. A. That's correct, June 30.

Q. Do you recall when you got to Havana? A. I think it was the 24th or the 25th, your Honor.

Q. When did you leave? A. I think we left July 5th. I know we were in Havana on Independence Day, July 4th.

Q. Would any reason occur to you or was there any conversation that might indicate to you any reason why Dr. Valverde and Dr. Suarez would appear before the notary on a Saturday and he would make the certification on a Sunday? [8564] A. No, sir.

The Court: All right.

By Mr. Bauman:

Q. Mr. Alprin, I show you Defendant's Exhibit DY, and I call your attention to a receipt bearing the name of Morris O. Alprin and the signature of Morris O. Alprin

(handing to witness). Is that your signature? A. It certainly is.

Q. When did you sign that? A. I don't remember signing it.

Q. You have no recollection at all of signing that? A. No, sir.

Q. I want to see if I can refresh your recollection. Did you sign it at the time you got the $264,000 check? A. I may have, according to what Mr. Rosenberg told me. I don't remember.

Mr. Kiendl: I object to that and move to strike it out.

The Court: Sustained. Strike it out.

Q. Did you sign it at any time previously? A. Mr. Bauman, I don't remember when I signed it, [8565] and I cannot pinpoint any time if I don't remember signing it.

Q. You realized, Mr. Alprin, did you not, that your subscription of Tivoli or your subscription to the stock of Tivoli Trading Company was a pretty important thing, did you not? A. Certainly.

Q. I show you a document which is a receipt stating that your subscription in Tivoli has been cancelled, bearing what you say is your signature. A. Yes, sir.

Q. And you have no recollection as to when, where or under what circumstances this particular receipt cancelling your stock interest in Tivoli was signed? A. I have no recollection. I can only reconstruct certain events and get a presumption and a possibility. More than that I cannot do.

Q. I have not asked you about presumption. I asked if you have any recollection. A. I said before, Mr. Bauman,

I have no recollection of ever signing that instrument. I do know I never got $500.

Q. You went to Toronto and you deposited the [8566] draft in three different bank accounts, is that right? A. Originally in one and then simultaneously splitting it up into three, the three being part of the one.

Q. The draft being made out to Economica, you deposited it in Economica's account, and at the same time drew checks to the names of the two others of these corporations for which you opened accounts, is that correct? A. Correct.

Q. Did you make any inquiry as to whether they had deposit insurance in the amount of about $90,000 and upwards in the Royal Bank of Canada, Montreal? A. No, sir, I did not.

Q. How soon after you got back did you tell Klein that you had deposited the money? A. I don't recollect whether it was a few days after or a week or so after, I have no recollection.

Q. What did Mr. Klein say to you at that time? A. Nothing. I just made a report telling him what I had done.

Q. Did you tell him you had deposited it in three separate accounts? [8567] A. No, sir, I did not.

Q. Did Mr. Klein ever tell you not to deposit Koerner's check? A. He told me to hold it at the time he gave it to me, and when he instructed me to take a draft up to Toronto for deposit, he told me to deposit my draft. Both drafts were to the same corporation, so there was no designation of one as against the other.

Q. Did Mr. Klein tell you any reason why he did not want both drafts deposited at that time? A. No, sir, he did not.

Q. Did he tell you he wanted your draft deposited or a draft deposited? A. He said deposit your draft. It is impossible to distinguish between two drafts made out to the same bank for the same amount to the same corporation.

Q. However, your discussion with him was you were depositing your draft rather than Koerner's draft? A. That's right.

Q. Did he tell you why he did not want Koerner's draft deposited at that time? [8568] A. No, sir, he did not.

Q. So you held on to Koerner's draft pursuant to instructions, is that right? A. That's right.

Q. How long did you hold that draft? A. From the time I received it, which was the end of March or early April 1947 until I delivered it to Mr. Glassgold as attorney for Mr. Koerner, some time I think on March 10th or 11th, 1952.

Q. I am not talking particularly—— A. Except, Mr. Bauman, that during one period of time I was not holding it, from December 1950——

Q. I was just going to say, I did not want you to talk about the period of the escrow. I am talking about what period of time did you hold the draft. A. From the time I received it until I turned it over to Messrs. Haas, Glassgold and their alternates for safekeeping and escrow.

Q. When was that? A. December 1950.

Q. So you held the draft for approximately three and a half years, is that right? A. Whatever the computation of time is, yes.

[8569] Q. Where did you hold the draft, Mr. Alprin, during those three and a half years, where was it physically? A. I think it was originally in my office safe and then in my office vault at the Chase Bank on 57th Street.

Q. You held the draft in your office safe for how long? A. I don't know, possibly a day or two, until I could get it over to the vault and put it in there.

[8570] Q. Then you put it in your safe deposit box at the bank? A. I think so.

Q. Don't you know? A. I don't know how long I had it in my office.

Q. With that reference to the time you had it in your offices, the only two places you had that draft for $264,000 in the 3½ year period that I just mentioned to you was either in your offices, which was for a very short period of time, or in the safety deposit box in your name in your bank, is that right? A. That's correct, except I may have taken it out of my vault to show it to Mr. Koerner from time to time when he questioned whether I still had it, and then I put it back again.

Q. That is where it sat? A. Yes.

Q. During those three and a half years until you gave it to Mr. Glassgold, the only person who saw that draft aside from you was Irving Koerner, right? A. And Mr. Klein, who saw it when he gave it to me.

Q. Once he had given it to you, once you had deposited yours in Canada, until you gave it to Mr. [8571] Glassgold and Mr. Haas to hold, the only person aside from you who saw that draft was Irving Koerner? A. I think so.

Q. Your draft was frozen up in Canada in 1947? A. That's correct.

Q. In 1949 those accounts were released, is that correct? A. So I was informed.

Q. Did you retain anybody to obtain the release of those funds? A. I certainly did not.

Q. I believe you said yesterday that Mr. Klein told you that he would take care of that? A. He said generally he would take care of it, for me to do nothing.

Q. In 1949 the funds were unfrozen, is that right? A. That's correct.

Q. You then, I believe you testified yesterday, pursuant to Mr. Klein's instructions—correct me if I am wrong in any part of this, Mr. Alprin—accumulated the entire amount of money of $264,000, which was only $50 shorter than what it had originally been because of Mr. Davis' fee, into one draft? A. That's correct.

Q. So in 1949 you had a draft of over $264,000 in your hand again, is that right? [8572] A. That's correct.

Q. What did you do with that draft, Mr. Alprin, from 1949, when you got it again, until 1952 when you deposited it? A. Either in my office safe or my vault.

Q. So that either in your office safe, certainly in parts of the years 1949 and 1950 or in your safe deposit vault there sat two drafts for $264,000 each undisturbed except when you perhaps on occasion showed Koerner his draft, is that right? A. That's correct. The same as I do any other trust certificate, it is locked, or anything I hold in escrow.

Q. And the only two people at that time who saw either of those drafts, yours or his, were you and Koerner? A. I don't remember whether Mr. Haas saw my draft on the occasion of our going up to Toronto to deposit it. If you are trying to confine it to people who saw it or possibilities—

Q. I am talking about after you got it in 1949. A. I think so.

Q. There came a time in 1950 when Mr. Koerner's draft was placed in escrow? A. That's right.

[8573] Q. Did you discuss that with Mr. Klein? A. Yes, and Mr. Rosenberg.

Q. To whom did you speak about it first? A. I don't remember whether it was Mr. Klein or Mr. Rosenberg.

Q. What did you tell Mr. Klein and what did Mr. Klein say to you? A. Either to Mr. Klein or Mr. Rosenberg——

Mr. Kiendl: I object to it if it were with Mr. Rosenberg. I have no objection if it were with Mr. Klein.

The Court: Sustained.

A. I think it was Mr. Klein, but I am not sure as to whom I spoke first.

Q. All right. A. But I explained the circumstances of the demand by Koerner, his retention of an attorney, his threat to sue me, and my very acrimonious discussion with Mr. Koerner and ordering him out of my office.

Mr. Kiendl: Will you read that, please.

(Answer read.)

A. (Continuing) He said, "You sit tight" or "You continue to hold it" or words to that general effect, and then there were one or two further [8574] discussions.

Q. Mr. Alprin,—— A. Will you let me finish, Mr. Bauman?

Q. Surely. A. I am trying to remember.

Q. I beg your pardon. A. I am trying to remember.

Q. Yes. A. And as a result of discussions with Mr Koerner and Mr. Glassgold a final agreement to put the draft in escrow in the hands of Mr. Glassgold's representative and Mr. Haas acting for me, so that both of them could have joint control, and to dispell from Mr. Koerner's ideas any thought that I might be using the draft for my own purposes or that I had used the draft for my own purposes, or might use the draft for my own purposes.

Q. Did you have any objection to being one of the escrow holders, yourself, Mr. Alprin? A. I didn't, but I didn't think it was proper that I should be.

Q. You have held escrow funds many times before? A. Oh, yes.

Q. Every lawyer does, doesn't he? A. Oh, certainly, but here I—but here, Mr. Bauman, I was in effect one of the parties to whom the [8575] escrow should not go, but to some impartial or third party.

Q. Whose idea was it that Mr. Haas should be the escrow holder, Mr. Alprin? A. Well, I trusted Mr. Haas and I selected him.

Q. Now, did you tell Mr. Klein that you had selected Mr. Haas to act as one of the escrow holders of Koerner's draft? A. I don't remember whether I mentioned Mr. Haas or who the escrowees would be, except that it was to be in escrow. I have no recollection, definite recollection, of mentioning Mr. Haas' name or Mr. Glassgold's name or their alternates. As a matter of fact, I didn't know who Mr. Glassgold's alternate was, until I saw the copy of the letter given to the bank in the preparation for this trial.

Q. Did you tell Mr. Klein about the fact that there were going to be four people with access to the box containing this draft? A. I don't think so. I think it was just a question of escrowees or possibly mentioning the two principal escrowees and not their alternates.

Q. Now, you knew that Mr. Klein was having tax difficulties in 1948, did you not, Mr. Alprin? A. I knew that there was a jeopardy assessment [8575a] against Mr. Klein because he was a very difficult man at the time, understandably so.

The Court: We will suspend now until 2.15.

(Recess to 2.15 p. m.)

[8576] AFTERNOON SESSION

(Jury present.)

MORRIS O. ALPRIN resumed.

Cross Examination Continued by Mr. Bauman:

Q. Mr. Alprin, I understood you to testify this morning that you called Mr. Klein on February 29, 1952, is that right? A. That's correct.

Q. And that in that conversation you told Mr. Klein that Koerner and Glassgold had demanded the draft, and that Koerner had said that Klein had authorized its release, is that right? A. That's correct, sir.

Q. This is a conversation you had with Mr. Klein on the telephone? A. That's correct, sir.

Q. Klein said it was all right to give it to him? A. That's right.

Q. Then I understood you to say that Klein said for you to get a good tax man? A. After he released the check to me, yes.

Q. And that he could not talk on the telephone? A. That's right.

Q. Would you tell me, please, just tell me [8577] that part of the conversation, how that subject came up about your getting a good tax man. A. He was talking, it was his conversation.

Q. Would you be good enough to tell me what he said in that respect? A. The substance of it was just exactly as I testified. He released the check to me and he said "Get a good tax man." I said, "What do you mean?"

He said, "I can't talk on the telephone."

Q. Is that the entire conversation about the tax man? A. That's right.

Q. Didn't he say in connection with "I can't talk on the telephone"—and if I am wrong, I know you will correct me—"Rosenberg will be in to see you next week"? A. Not in connection with that. He said "Before you turn the check over to Mr. Koerner, Rosenberg will be in to see you."

Q. It was in connection with the release of your own check or draft, to be more exact, that Mr. Klein told you to get a good tax man? A. Not in connection with the release, after he had released it.

[8578] Q. It was in that same conversation? A. That's correct.

Q. You said, I gather, in effect, "You released Mr. Koerner's draft, how about mine"? A. That's correct.

Q. He said to you, "You can release yours, you can have yours too", or whatever the language was that he used? A. That's correct. I think he said—I said, "Fine," as I recollect it, "now I will be able to have the use of it."

He said, "Get a good tax man."

Q. And Rosenberg came to see you on the following Monday morning? A. I don't know whether it was in the morning or afternoon, but on Monday.

Q. He came to see you on Monday? A. Yes.

Q. Did Rosenberg go into this "Get a good tax man" any further? A. No, sir, he did not.

Q. But you then told Mr. Klein that you had intended to report this money as a capital gain? A. I did not.

[8579] Q. Had you ever at any period of time from March of 1947, when Mr. Klein gave you the draft of $264,000, told Mr. Klein or Mr. Rosenberg that you had intended to report this as a capital gain? A. I have no recollection of any such conversation.

Q. At the end of the morning session, I believe, I was asking you, you knew, did you not, in 1948, that Mr. Klein was having tax difficulties, using the term just as a descriptive one, is that right? A. I knew a jeopardy assessment had been filed against him.

Q. How soon after the jeopardy assessment had been filed did you know about it? A. I don't know, I can't pinpoint the time, some time during the year 1948.

Q. After 1948 Mr. Klein had told you that he was having tax troubles and was trying to make a settlement with the Internal Revenue Service to cover all the corporations, isn't that right? A. No, sir.

Q. What? A. No, sir, I don't think so.

Q. That he didn't want you to release your draft until that settlement had been negotiated? [8580] A. I don't think so.

Q. Let me ask you, sir, whether you were asked these questions in the grand jury and whether you made these answers:

"Q. Didn't you press to get the money? A. I certainly did.

"Q. Didn't you press hard until—to find out why you did not get the sum of money, the use of it alone would be of value? A. Mr. Klein told me was having tax troubles and was trying to make a settlement with the Tax Department in which all the corporations would be included in the settlement, otherwise he couldn't release——

"Q. When did he first tell you he was having tax troubles? A. I think it was somewhat after the jeopardy assessment was placed against him, it was 1948 or some time thereafter, I don't remember."

Were you asked those questions and did you make those answers? A. I have no recollection of those specific questions. I think there was a general area of examination with respect to that.

[8581] Q. And did Mr. Klein tell you that he was having tax troubles? A. Mr. Klein was hollering all over the lot about the injustice of filing a jeopardy assessment against him when he was merely making a cruise, and I think he said that they said that some government agency, or some government agent had obtained a jeopardy assessment on the basis that he was trying to leave the country.

Q. Well, did Mr. Klein tell you that he did not want you to use your draft because he was having tax troubles and

was trying to make a tax settlement with the Internal Revenue Service on behalf of all the corporations? A. I don't remember Mr. Klein saying that. I remember a discussion with Mr. Rosenberg about a proposed——

Mr. Klein: I object to the discussion with Mr. Rosenberg, your Honor.

The Court: Sustained.

A. —about a proposed settlement by Mr. Klein with the Bureau of Internal Revenue, that his attorneys were conferring with the Internal Revenue with reference to the settlement of their claim [8582] against him and various companies against whom they had filed jeopardies—I did not know all the companies—and that Mr. Rosenberg said that Mr. Klein was trying to include all the corporations in connection with the Harwood picture in that settlement. But he said that his attorneys, McGuigan and Kilcullen, would not agree to it and I called up McGuigan and Kilcullen and they said that they would not agree to it, that they would not recommend it, that they did not think it could be handled that way.

Q. I just want to ask you one more question, Mr. Alprin: Does the following fairly represent your present recollection of what transpired: Did Mr. Klein tell you that he was having tax troubles and was trying to make a settlement with the Tax Department in which all the corporations would be included in the settlement, otherwise he couldn't release your draft? A. That is not a fair statement.

Mr. Bauman: I have no further questions, your Honor.

Cross Examination by Mr. Kiendl:

Q. Mr. Alprin, did I understand you this morning [8583] to tell Mr. Bauman that your recollection was not refreshed before you went before the grand jury?

Did you get my question? A. I got the question. My recollection, I don't remember the exact words of my answer, but my recollection was not refreshed with respect to every aspect of every question that was asked of me. I had a general idea of the——

Q. Do you recall testifying this morning, Mr. Alprin, that your recollection had not been refreshed before you went before the grand jury, but since that time you had examined every scrap of paper? A. That is correct, sir.

Q. That is correct, isn't it? A. Basically correct, yes, sir.

Q. And prior to your taking the stand here you had examined every scrap of paper and did everything in your power to refresh your recollection to the very best of your ability? A. Yes, sir.

Q. That is a fair statement, isn't it? A. Including the efforts of my attorneys, asking me questions with reference to the particular matter.

[8584] Q. Including going through interrogation by your attorneys? A. That is correct, sir.

Q. So there is nothing that you can think of that you did not do to get your memory in the best possible shape before you testified? A. Subject to the frailties of human

nature and the ability of a person to absorb all that information.

Q. But you did the best you possibly could? A. I certainly did, Mr. Kiendl.

Mr. Kiendl: Now may I have Government's Exhibit 347 and FH and FX.

By Mr. Kiendl:

Q. I think you told Mr. Bauman just a few minutes ago this afternoon that you had no recollection whatever of having told Mr. Klein that you were going to report the proceeds of this draft or check for $264,000 as a capital gain? A. I don't believe so, sir.

Q. You did testify to that, didn't you, that you had no such recollection? A. That is correct. I say I don't believe—I believe I said that. I am sorry.

[8585] Q. Now, as I ask you these questions, you haven't the slightest recollection of ever having told Mr. Klein anything like that, have you? A. Not prior to the time that I deposited my check.

Q. Did you tell him after the time you deposited your check that you were going to report that as a long-term capital gain? A. No, sir. I did not tell it to him in that particular language.

Q. Did you tell him at any time in any language that you were going to report the proceeds of that check as a long-term capital gain? A. In this respect, sir: After my interrogation by the Bureau of Internal Revenue, where they exhibited that receipt to me and said that my subscription to Tivoli was cancelled thereby, I think I discussed it with Mr. Klein and with Mr. Rosenberg.

Q. You mean, after you had testified before Mr. Victory and Mr. McCarthy, and there they had exhibited the receipt for the cancellation of your subscription to the capital stock of Tivoli? A. That is correct; I think it was after the second interrogation in October.

[8586] Q. So that was at the end of 1952? A. That is correct.

Q. But up until that time you had never indicated to Mr. Klein that you were going to report that money as a long term capital gain; that is true, isn't it? A. I think that is true, yes, sir.

Q. And so far as you know no one else had so reported it to him? A. About my draft?

Q. About your intentions as to the return of that money for tax purposes. A. Not that I know of.

Q. Now, you have examined these returns very carefully, the two declarations of estimated tax, one your Exhibit FX, the other two, your Exhibit FH and Government's Exhibit 347? A. What is 347, Mr. Kiendl?

Q. 347 is your return for the year 1952. A. I examined them. I don't know how carefully.

Q. Those are all documents that pertain to the returns that you made for the year 1952? A. Yes.

[8587] Q. The first one being the proposed return that was signed and the signatures stricken out? A. It is a proposed declaration of estimate.

Q. And never filed? A. Never filed, no, sir.

Q. And it was after that was prepared by Mr. Haas' firm, or by Mr. Haas, that you went to Mr. Kaminsky, was it not? A. That is correct.

Q. Now the reason why Mr. Kaminsky was called in was because Mr. Haas had a wife who was ill? A. That is correct, sir.

Q. Was that the only reason? A. So far as I know.

Q. So far as Mr. Haas told you, there was no reason why some other partner of his, or these 19 accountants that he had in his office could not have prepared your declaration of your estimated 1952 tax, was there? A. Except, Mr. Kiendl, that all the years that my returns were prepared, it was Mr. Haas that I saw all the time. He was the man with whom I had contact. He was my personal friend.

Q. And he had always done the work personally? [8588] A. That is correct, and never received a fee for it other than a case of Scotch whisky or some imports at the end of the year.

Q. You never even paid him for his work? A. That is correct.

Q. And when his wife was ill and he couldn't serve you, he suggested to you that you go to some other firm— A. That is correct.

Q. —to have this done, and he suggested Mr. Kaminsky? A. I don't remember whether he suggested Mr. Kaminsky. I think he did. Mr. Kaminsky's office was in the same building with Mr. Haas, in the Channin Building.

Q. In any event, you did go to Mr. Kaminsky? A. Yes, sir, I did.

Q. He did prepare the declaration of your estimated tax for the year 1952 that was actually filed? A. Yes, sir.

Q. And he prepared it in accordance with information that you had given him? A. That is correct.

[8589] Q. And included in that information was the receipt of the proceeds of this check for $264,000; that is right, isn't it? A. That is correct, sir.

Q. And Mr. Kaminsky advised you, prepared a return reporting that as part of your taxable income? A. That is correct, sir.

Q. And then the final return for that year that was filed on or about March 15, 1953, that was prepared by Mr. Kaminsky or his firm? A. Yes, sir, and his name so appears on the front sheet.

Q. And that was prepared on the information which you had turned over to him? A. That is correct, sir.

Q. Now, did you confer, consult or even talk to Mr. Klein about the contents of any one of those three documents? A. No, sir, I did not.

Q. At any time? A. No, sir.

Q. Did you authorize Mr. Kaminsky, as your tax man, to confer with Mr. Klein about any one of those three documents? [8590] A. I did not authorize him to confer with Mr. Klein or anybody.

Q. So far as you know, did Mr. Kaminsky ever communicate with Mr. Klein in any way, shape or manner about any one of those three returns? A. So far as I know he did not, sir.

Q. So far as you know, did Mr. Klein know anything about the contents of any one of those three returns? A. So far as I know I don't think he did.

Q. You were asked by Mr. Bauman this morning whether or not you recalled signing this receipt, which is part of Defendant Klein's Exhibit DY, I think it is. A. Mr. Bauman asked me about it.

Q. And you told him, did you not, that you had no recollection whatever of having signed that receipt? A. That is correct.

Q. You had no recollection of the time that you signed it or the place where you signed it or the circumstances under which you signed it? A. That is correct, sir.

Q. It does bear your genuine signature, doesn't [8591] it? A. There is no question of that, sir.

Q. And you testify here that that is your signature, put on that document by you? A. Yes, sir. When it was first exhibited to me at Internal Revenue I only saw a photostat, and I know that tricks can be done with photostats, and then I questioned my signature, but that is my signature.

Q. That is all I asked you. You knew that, too, didn't you, Mr. Alprin? A. Yes, sir.

Q. Now, when you put your signature on this document, did you read it, or don't you recall that? A. Not having recalled signing it, Mr. Kiendl, I don't recall having read it.

Q. Well, you know now that it contains, over your genuine signature, these words:

> "I received from the Tivoli Trading Company, S. A. $500, Re: payment in full for subscription to capital stock, said subscription having been cancelled"?

A. Assuming that you are reading it correctly, and I certainly do, that is what it says.

[8592] Q. And you haven't the slightest recollection of ever having signed that document? A. That is correct, sir.

Q. Or ever having read that document prior to the time that this case was instituted? A. My answer to that question, Mr. Kiendl, is I remember reading a document, a photostatic copy of a document, exhibited to me by Mr. Rosenberg in the early part of 1952, in about January, I believe, and I remember seeing a photostatic copy of that exhibit exhibited to me at Internal Revenue in October, 1952.

[8593] Q. But despite the fact that whenever it was that you saw photostatic copies of this exhibit you have no recollection of having signed a receipt containing that language? A. That's correct.

Q. You say now that you never received $500 back from Tivoli Trading Company? A. That's correct.

Q. You wouldn't sign a receipt saying you had received $500 unless you had actually received it, would you? A. I would not.

Q. You would not sign a receipt saying that your subscription to the capital stock of that corporation had been cancelled unless it had been cancelled? A. That's correct.

Q. Did you know that Mr. Rokoff had subscribed to the capital stock of Tivoli Corporation at one time? A. At what time?

Q. At any time. A. Yes, I knew about it immediately prior to the trial.

Q. Immediately prior to this trial? A. That's correct.

[8594] Q. Take up to the time of the indictment by the grand jury on May 13, 1954, did you know about it prior to that time? A. I did not know about Mr. Rokoff particularly.

Q. That is all I am asking you about is Mr. Rokoff. A. I am not certain.

Q. Did you know about Mr. Koerner having subscribed to the capital stock of Tivoli Trading Corporation at one time, and when I say Tivoli Trading Corporation, or whatever I say with the name Tivoli I mean Tivoli Trading Co., S.A.? A. I knew about it some time after my examination before Internal Revenue in October.

Q. Let us put it this way: Up to the time when you appeared before the Internal Revenue agents in the end of 1952 did you know that anybody but yourself had subscribed to the capital stock of Tivoli Trading Company? A. I knew about Mr. Koerner when I received the draft from Mr. Klein in 1947. I didn't know whether it was Tivoli, I presumed it was Tivoli, because Mr. Klein said this check is for Mr. Koerner, and it was an identical amount.

[8595] Q. He said "This check is from Mr. Koerner in an identical amount"? A. Oh, no.

Q. You mean the check was for an identical amount? A. When he gave me a check in the identical amount as the check I had, he said "This check is for Mr. Koerner."

Q. And it was a check of Tivoli Trading Company? A. No, it was a draft on the Royal Bank of Canada.

Q. Didn't he say it represented funds of Tivoli Trading Company? A. He said it was in liquidation of the Harwood picture and my investment.

Q. And he did not say anything about Tivoli Trading? A. Yes, I think he mentioned Tivoli, too.

Q. You knew then that the Koerner check to all intents and purposes was given to you to hold for Mr. Koerner for the same reason that your check was given to you? A. Yes, sir.

[8596] Q. Outside of you and Mr. Koerner, did you know prior to the time you testified before the Internal Revenue agents the last part of 1952 that any of the others had subscribed to the capital stock of Tivoli? A. I think I knew about Mr. Roer's by reason of a conversation with Mr. Rosenberg.

Q. Anybody else? A. I don't remember anybody else.

Q. Did you know that Mr. Roer had signed a receipt for the money that he subscribed for and that had been cancelled? A. At what time?

Q. I did not ask at what time, did you know that he had signed a receipt for the return of the money and that his subscription for the stock had been cancelled? A. I didn't know, I had been told.

Q. Did you know Mr. Koerner had signed a receipt? A. I didn't know, I was told.

Q. Did you know Mr. Rokoff had signed such a receipt? A. I didn't know, I was told.

Q. Did you know Mr. Rosenberg had signed such [8597] a receipt? A. I didn't know, I was told.

Q. Did you know Mr. Silver had signed such a receipt? A. I was so told.

Q. You see the originals of all those receipts contained in Klein's Exhibit DY, do you not? A. Yes, sir, I see them.

Q. Had you ever seen the originals or copies of any of those receipts from any of those individuals prior to the time you testified before the Internal Revenue agents in the end of 1952? A. I saw a photostatic copy of a page with my receipt with two paragraphs instead of one shown to me by Mr. Rosenberg. I did not see the others.

Q. You were shown by Mr. Rosenberg a photostatic copy of a page, is that right? A. That's correct.

Q. With your signature on it? A. Yes, sir.

Q. Was it in the form of a receipt that you have signed here? A. Partially, because there was a paragraph above that, referring to my receipt.

[8598] Q. There was a paragraph above that ? A. That's correct.

Q. You have not told us anything about that yet on the stand? A. Nobody has asked me.

Q. You went all over this with your attorneys, didn't you? A. I certainly did.

Q. You told them about this photostatic copy of a receipt that Mr. Rosenberg had shown you on long paper? A. Yes, sir.

Q. And you did have some recollection of having signed that receipt? A. I have no recollection of signing that receipt, except from what Mr. Rosenberg told me.

Q. Did his telling you that you had signed it refresh your recollection that you had signed it? A. No, sir, it only tied it in possibly for time.

Q. Did that receipt recite that you had been paid the $500 that you had subscribed to the capital stock of Tivoli? A. It did, and recited that I received a check for 264-some-odd thousand dollars.

[8599] Q. Did it recite that your subscription had been cancelled? A. Yes, sir.

Q. You remember all that distinctly, that you saw a photostatic copy of such a receipt, Mr. Rosenberg exhibiting it to you, and you remember its contents? I remembered its contents generally, sir.

Q. When Mr. Bauman asked you this morning—— A. And so——

Q. If I interrupt you, just stop me. A. And I so testified before the Internal Revenue in October 1952.

Q. When Mr. Bauman asked you about this receipt this morning you said you had no recollection of the time, the place, the circumstances or anything about it? A. That's correct.

Q. Did you know then that you had in mind that you had signed a receipt containing exactly that same language, a photostatic copy of which was shown to you by Mr. Rosenberg; did you know that then? A. I still have no recollection, Mr. Kiendl, of having signed a receipt.

Q. May I interrupt? A. Certainly.

[8600] Q. I didn't ask you that. When you answered Mr. Bauman's questions this morning that you had no recollection whatever about that receipt, did you then have in mind that you knew that a receipt had been shown you or a photostatic copy of a document containing your signature had been shown you containing that exact language? A. I think, Mr. Kiendl, your first sentence of that question carries a presumption that I cannot go along with.

Q. Then you can't answer the question? A. Not in the form in which it is.

Q. Wasn't it the fact that you had signed such a receipt the reason for your never telling Mr. Klein that you were going to return that money as a long term capital gain? A. No, sir.

Q. It wasn't? A. No, sir.

Q. You recall testifying on two occasions before the Federal agents, the special agents of the Intelligence De-

partment of the Internal Revenue Service? A. Yes, sir, in September and October.

Q. In September and October? [8001] A. Yes.

Q. In September you were examined for some hours, were you not? A. I think I was there an entire morning. I don't remember the time. I was there a considerable length of time.

Q. And they asked you a great many questions on that occasion? A. Yes, sir, they were read into the record here.

Q. Whether they were read into the record here or not, it took a long time to ask those questions, all the morning? A. I think it was all the morning, yes, sir.

Q. They didn't ask you any questions on that occasion about these receipts that I have just been questioning you about, did they? A. I don't think they did. I think they asked those questions on the occasion of the second visit in October.

Q. On the occasion of the second visit in October, you knew by that time, did you not, that they had examined Mr. Koerner after your examination in September, and had exhibited to him a receipt that he had signed? A. I don't remember whether or not I knew they [8002] had exhibited a receipt to him. I knew they examined Mr. Koerner because he so told me.

Q. And you heard his testimony before those agents read into this record, didn't you? A. Yes, sir.

Q. And you know from hearing that testimony read into this record that they examined him about these receipts cancelling the stock subscription, don't you? A. I don't recollect whether they did or not.

Q. You have no recollection? A. I don't remember those questions in his examination, Mr. Kiendl.

Q. Did he tell you that he was testifying before the revenue agents? A. Yes.

Q. Did he tell you the substance of the examination that they conducted of him? A. My recollection of his conversation with me——

Q. Couldn't you just answer that? Did he tell you the substance of his conversation with him? Didn't you answer that yes or no? A. Substance is a word that you and I may disagree on, Mr. Kiendl.

[8603] Q. Then you can answer it no. Can't you answer one way or the other? Did he tell you the substance of the examination? A. Yes, sir.

Q. Did you ask him the substance of the examination? A. I asked him what were the areas of examination.

Q. Did he tell you among the areas of the examination was the existence of a receipt that he had signed, acknowledging receipt of the sum that he had paid for his subscription to Tivoli and cancelling that subscription of stock? A. I don't recollect that, sir.

Q. You do not recollect? A. No, sir.

Q. Isn't it the fact that when you came back the second time in October, you were then confronted for the first time with that receipt? A. Yes, sir.

Q. And you had not the faintest idea of its existence up to that time? A. I don't think so.

Q. And you mean you don't think—— A. I think that I didn't have any recollection [8604] of the receipt before that time.

Q. Did you ask Mr. Koerner who represented him before the Internal Revenue agents when he was examined? A. I didn't ask him. I don't remember whether he told me that he was down with anybody, I don't remember.

Q. You don't remember his telling you that he was represented by an attorney by the name of Glassgold? A. He may have, but I don't remember.

Q. You don't remember? A. I don't remember.

Q. Do you remember Roer telling you when he appeared before the Internal Revenue agents he was represented by a lawyer by the name of Glassgold? A. I don't remember that, sir.

Q. Who represented you when you testified? A. I went down there alone.

Q. Both occasions? A. On both occasions.

The Court: Are you through interrogating about those receipts?

Mr. Kiendl: Yes.

The Court: May I ask the witness a question?

[8605] Mr. Kiendl: Surely.

The Court: May I see Exhibit 388, please.

Mr. Kiendl: I used the originals.

The Court: Exhibit DY is the same, one is a copy of the other.

By the Court:

Q. I don't know whether this has been brought out or not, Mr. Alprin, but I am going to ask you as you look at the papers making up Defendant Klein's Exhibit DY, none of them are dated, is that correct? A. That's correct.

Q. You say in 1952 Mr. Rosenberg showed you a photostat of a document containing your signature which contained two paragraphs, if I understand your testimony correctly, the first paragraph reciting the receipt by you of a draft in the sum of 204,000-odd dollars, the second paragraph reciting the receipt by you of $500 as a cancellation of your subscription of Tivoli stock; is that what you say Rosenberg showed you? A. Yes, and that particular thing had no date on it either. That is how I questioned Mr. Rosenberg——

Q. I don't want to know your reason. I just wanted to ask you one question, was that photostat that [8606] was shown to you, did that have a date on it? A. It had no date on it.

The Court: That is all.

By Mr. Kiendl:

Q. Did you ever get a copy of it? A. No, I asked a copy, I asked for a copy of both Mr. Rosenberg and Mr. McGuigan and never received one. I asked for an opportunity to see the original and never saw it until I was in this courtroom.

Q. Did you ever make a demand in writing for a copy of it? A. No, sir.

Q. Did any lawyer ever representing you make a demand in writing for it? A. Not to my knowledge.

Q. There came a time in 1952 when you told us that Mr. Koerner made a demand on you in writing for that check that you were holding for him? A. Yes, sir, he sent me a registered letter.

Q. Prior to the receipt of that registered letter you had received demands from Mr. Koerner for that check, I think you told us, in the years 1948, 1949, 1950 and 1951, is that right? [8606a] A. Yes, sir.

Q. And those demands as the years went by increased in intensity, did they not, you so testified? A. They increased in intensity up to December 1950 when the check was put in escrow, and there were a few requests but not very many during the time that it was held in escrow.

[8607] Q. Is it fair to say, Mr. Alprin—— A. May I finish, Mr. Kiendl?

Q. Certainly. A. And the requests after 1950, when the checks were in escrow, was or were "Have you received a release yet?" They were not demands on me for the checks, but when I had a release so the escrow could be terminated and Mr. Koerner could receive his check.

Q. Is it fair to state it this way, Mr. Alprin, from the time you first received Mr. Koerner's check in the year 1947, you received demands from him during the year 1948, during the year 1949 and during the year 1950, increasing in intensity, that those demands subsided after the escrow agreement was entered into, and the requests during the existence of the escrow agreement were to know whether the check had been released by Mr. Klein? A. That's correct.

Q. And then there were no further demands until you received the registered letter which is your Exhibit FS? A. I think there was a—I don't know whether you call it a demand or request or question about the release—but in the early part of 1952, January, [8608] either Mr. Koerner

or Mr. Glassgold asked me about turning over the check or whether or not I had received the instructions from Mr. Klein.

Q. It was as a result of the demands culminating in this registered letter, your Exhibit FS, that you communicated with Mr. Klein by telephone? A. I tried to verify Mr. Koerner's statement to me that Mr. Klein had released his draft.

Q. I did not ask you that. Was the result of the receipt of this demand, this registered letter that has been put in evidence here as your Exhibit FS, that you tried to reach Mr. Klein on the telephone? A. As a result of that demand and the conversation held the day that letter was written.

Q. The conversation had with Mr. Koerner that same day? A. And Mr. Glassgold.

Q. And Mr. Glassgold, his attorney? A. That's correct.

Q. Was it as a result of anything else that you tried to get Mr. Klein on the telephone? A. No, sir.

Q. Did you know at that time, the end of February, 1952, that these drafts were still outstanding, [8609] yours and the one from Mr. Koerner? A. I knew it, because I had possession——

Q. I did not ask you why. A. I am sorry. I did know it.

Q. Mr. Alprin, were you informed at about the time you called on Mr. Klein that the drafts were outstanding and that the moneys were going to be returned from the New York agency on which the drafts were drawn back to the Bank of Canada, and that you would have some difficulty in availing yourself of the proceeds of those drafts, unless something were done about it immediately? A. I was told something, but not what you said, Mr. Kiendl.

Q. You were told something along that line? A. If you permit me, I will tell you what was said.

Q. Is it something along that line? A. Along some general lines like that, with some changes in what you said.

[8610] Q. Now, when was this, whatever was said, when was it told to you, about February of 1952? A. Sometimes about the end of January or early February '52.

Q. Isn't it a fact that Mr. Rosenberg came to you, sent by Mr. Klein, and told you that these drafts were outstanding, that Mr. Klein had heard about it in Canada, and that you had better do something about it or the funds would go back to Canada and you would have to go up there and identify yourselves before you could get the money? A. He told me about one draft that would be outstanding close onto five years, and the requirement at the end of five years was to write a letter or make some statement to the bank in order for them to hold it for a longer period than five years, otherwise it would be turned over to the Bank of Canada, and then you would have to make your representation to the Bank of Canada.

Q. And Mr. Rosenberg told you that, didn't he? A. That's correct.

Q. And it was toward the end of January? A. Or early February.

Q. Or the month of February, 1952? [8611] A. I think it was sometime in January——

Q. Wasn't that the reason you called up Mr. Klein? A. No, sir, it was not.

Q. Isn't it a fact, sir, that when you——

Mr. Kiendl: Withdrawn.

Q. You refreshed your recollection as to your telephone conversation with Mr. Klein on February 29, 1952, from a telephone bill that you had received? A. That's correct, sir.

Q. And did you refresh your recollection as to that telephone conversation from any other documents? A. No, sir, just my recollection. The telephone bill only refreshed my recollection as to the date.

Q. Hadn't you refreshed your recollection from your own correspondence? A. Yes. I had sent a letter to Mr. Klein on March the 4th, after Mr. Rosenberg's visit to my office the day before, I believe.

Q. And that letter recited that you talked to Mr. Klein on the 29th day of February, did it not? A. That's correct.

Q. And you received a letter from Mr. Klein's attorney talking about the telephone conversation on February 29, 1952, did you not? A. I received a letter from Mr. Klein's attorneys [8612] dated March 12th and received by me on March 19th.

Q. Now, will you answer my question? A. I did receive such a letter, sir.

Q. Containing the statement that you had a telephone conversation with Mr. Klein on February 29th? A. I don't remember whether it said February 29th. If you will show me the letter I can refresh my recollection as to the date.

Q. Will you look at the letter and see whether that doesn't state specifically February 29th? A. Yes, sir, it does.

Q. Now this telephone bill recites, does it not, telephone conversation that you had with Los Angeles on February 29th costing $3.50. A. That's correct.

Q. That was a very short conversation, wasn't it? A. I don't know how short it was.

Q. But it was less than three minutes, wasn't it? A. I don't know. I have no recollection of the time.

Q. You what? A. I have no recollection of the length of time. I don't know what the charges are and I can't compute it.

Q. Well, you went through every scrap of paper. [8613] You saw that the charge was $3.50 on your own bill, didn't you? A. I am not questioning the charge. I don't know whether it is $1.20 a minute—this was a call that was concluded in the evening when the rates are lower.

Q. It was an evening call? A. Yes, sir. I spoke to Mr. Klein, it was a little after eight, when I was home, and I spoke to him from my house, the reason being that when I tried to reach him he had still not arrived in Los Angeles. He was on his way home, and the call was completed in the evening at about 8 o'clock. I know it was after dinner, from my home.

Q. Mr. Alprin, you do recall, now that I call it to your attention, the bill was $3.50, that the telephone conversation between you and Mr. Klein was not a very extended one? A. I can't say, Mr. Kiendl, whether it was extended or not.

Q. You don't know? A. I don't remember.

Q. You haven't any recollection whether it was a prolonged conversation or a very short one? A. The difference between three minutes and five minutes may not be prolonged or short.

[8614] Q. Well, it wasn't more than five minutes? A. I don't think it was.

Q. What? A. I don't think it was over five minutes.

Q. And that is your best recollection, that it wasn't over five minutes? A. I would say so. I think it was about that time. I don't know.

Q. And in that conversation did anything happen that Mr. Klein was offended by what you said or was it just a nice, pleasant conversation between two old friends about these checks? A. As far as I was concerned I think it was a pleasant conversation and my recollection of Mr. Klein's conversation is that it was a pleasant conversation.

Q. But in the course of that pleasant conversation he told you to get a good tax man? A. That's correct.

Q. And you don't know why he suggested that or in what connection he suggested that at all? A. I don't. I don't know what was in his mind.

Q. Isn't it the fact, Mr. Alprin, that on that occasion Mr. Klein talked with you you told him, in substance, that you had received information about these [8615] outstanding drafts, about the fact that if they weren't paid within a reasonable length of time there may be some trouble in getting the proceeds, and that you intended to use yours and report it as a long-term capital gain and Mr. Klein said, in substance, "Well, you'd better get a good tax man," and hung up the telephone? A. That is not so, Mr. Kiendl.

Q. That is not so? A. No, sir. In the first place my check was not out five years. I had obtained my check in 1949, the second check, and it was only three years old. There was no question of escheat or transfer on my check.

Q. Your check was only three years old? A. That's correct.

Q. But you had the original check two years before that? A. Well, I had the original check which I received and deposited in Toronto and it was frozen, when it was in the three accounts, and when I consolidated those accounts and got a new check, I got a new check in 1949, and that check was only three years old; there was no question of a five-year statute or five-year requirement to be turned over to the Bank of Canada.

Q. Mr. Alprin, when you talked to Mr. Klein on the telephone on February 29th, did you tell him that you were [8616] going to report the proceeds of the check as a long-term capital gain? A. No, sir, I did not.

Q. But you did within a short space of time thereafter, didn't you? A. I did, sir. After consulting with my tax man.

Q. How many days thereafter was it before you decided to return that check, the proceeds of that check, as a long-term capital gain? A. Well, I had—the difference in time, in answer to your question, between February 29th and March 12th.

Q. So at most it would be 12 days, would it not? A. That's correct, sir.

Q. And probably was much less than that because you didn't file that return on March 12th at the last minute as a long-term capital gain, did you? A. I filed it exactly on March 12th, Mr. Kiendl, and it——

Q. But you decided before filing it that you were going to report it as a long-term capital gain before March 12th, didn't you? A. What was that, please? Will you repeat [8617] that?

(Question read.)

A. I decided it after conference with Mr. Kaminsky. I don't know the length of time before this was prepared.

Q. You don't know how many days before that was prepared? A. No, sir, I do not.

Q. So is it fair to say that you had decided to file this long-term capital gain within the limit of not more than 12 days after you had talked to Mr. Klein and probably within a limit of 10 days after you had talked to him? A. I couldn't specify the exact time because I don't know when the decision was made, Mr. Kiendl.

Q. And have you conferred with Mr. Kaminsky and seen his files on the preparation of that declaration of the estimated tax? A. I have conferred with him. I don't remember any files. The only thing was the preparation of the figures, that's all.

Q. Did you look at his worksheets? A. There is no worksheet for this. This is just a question of figures and putting down the amount of tax.

[8618] Q. You mean there are no worksheets on which that is computed at all? A. On an estimate?

Q. On an estimate. A. I don't think so. You just have a gross amount, and you figure the rate of tax and the resulting figure is the figure that you put on your declaration.

The Court: Well, as a matter of fact—excuse me—I don't know, I may be mistaken, but as matter of fact doesn't the form that the Government supplies give you the worksheet that you work it out, and then you just tear off the bottom section which is your estimate?

The Witness: That's correct. It is a copy.

The Court: Well now, when you were referring to worksheets, were you referring to that, Mr. Kiendl? I don't want confusion here, because we have been thinking of worksheets as the yellow columnar sheets.

Mr. Kiendl: I was referring to any kind of worksheets, whether on a Government form——

The Court: On that basis——

The Witness: There was no worksheet that I know except that I gave—Mr. Kaminsky had the figures as I had given them, and he just computed the amount of tax by taking the gross income or the taxable income at [8019] the regular rates for that bracket plus the 25 per cent of $264,000, added them both together, and they amounted to $77,000.

Q. He had those figures? A. Yes, sir; I gave them to him.

Q. Have you looked at those figures? A. Yes, sir.

Q. Have you them with you? A. No, sir.

Q. Has Mr. Kaminsky got those figures? A. I don't know.

Q. You haven't seen them since you gave them to him? A. I didn't give them to him in writing, Mr. Kiendl. I gave them to him verbally.

Q. Did he make a memorandum of them? A. I think he did in order to compute the amount of tax.

Q. He couldn't compute the amount of tax unless he made some computations other than shown on the declaration, isn't that so? A. The only computation he could make

is the amount of gross income at the bracket in which it is, plus 25 per cent of $264,000, add them both together and that is the amount, and that amounted to $77,000-odd.

Q. 25 per cent of $264,000 being a long-term [8620] capital gain? A. That's correct, sir.

Q. So that the figures you gave him or the figures he computed somewhere would show a long-term capital gain, wouldn't they? A. Oh, yes, sir.

Q. And you have never examined those documents, if there are any in existence, since you talked to him about it? A. That's correct, sir.

The Court: Mr. Alprin, you testified that Mr. Haas prepared your original estimate for that year and that reflected the same tax as the previous year, which is the customary thing, and that ran to some $8,100-odd, as I recall it.

The Witness: That's correct, sir.

The Court: Now the return, the estimate, rather, that Mr. Kaminsky prepared, did that reflect the 25 per cent of the $264,000 plus the figure that Mr. Haas had used on the intended 1952 estimate which was not filed?

The Witness: I think it was a little larger because I anticipated my income to be larger during that year. I had several matters pending.

[8621] The Court: All right.

The Witness: And I anticipated within $100 of my income.

Mr. Kiendl: May I have the Government's Exhibit 340?

Q. While they are looking for that, Mr. Alprin, in connection with this check of $264,000, which I will exhibit to you in just a minute, you have told us of a number of conversations that you had with Mr. Klein beginning in 1945; the conversation in the lobby of a hotel in Vancouver? A. That's correct, sir.

Q. And you have told us, I think, of four conversations that you had with Mr. Klein on that subject? A. I don't remember the number.

Q. Let's see if we can enumerate them. The first conversation was in the lobby of the hotel. Do you recall that one? A. That's correct. That was in the summer of 1945.

Q. And can we identify that very generally by saying that that was the conversation where he said something about taking you into the family? [8022] A. That's correct, sir.

Q. Then the second conversation occurred in October, when you wrote out your check for $500; that's right, isn't it? A. That same year, yes, sir; that's correct.

Q. There were no conversations in between those two times that you have testified to thus far, were there? A. No, sir, and I don't recollect any.

Q. And you don't recollect any? A. No, sir.

Q. Then after that second conversation in October of 1945, the next conversation you had on that subject was in March of 1947? A. No, sir.

Q. Didn't you tell us that your next discussion regarding your investment was in March of 1947, when Mr. Klein said something about winding up his investment, he was going to let you know and get you the money? A. Yes, sir, that is correct; that's correct.

Q. That is correct, isn't it? A. Yes, sir; yes, sir.

Q. So that from October of 1945 to March of 1947 you had no discussion with Mr. Klein that you have testified to on this subject? [8623] A. That's correct, sir.

Q. That is a period of a year and a half? A. Yes, sir.

Q. Now, that was the third conversation in March of 1947? A. Yes, sir.

Q. The fourth and the last one was the one when you received the check? A. That's correct, sir.

Q. Now, am I correct in stating that so far as you have tried to refresh your recollection there were no conversations of any kind, character or description that you remember with Mr. Klein regarding this $264,000 check or the background from what it originated except those four? A. Up to that time, yes.

Q. Up to that time? A. That's correct, sir.

[8624] Q. Now, let's take them in order, Mr. Alprin. The first one was in June or July of 1945? A. July or August. I was there from the middle of July to the first week of August.

Q. And from the middle of July to the first week of August you were there at the invitation of Mr. Klein and his brother? A. That is correct, sir.

Q. And you were inspecting some new construction of buildings, the United Distillers plant up there? A. I had never seen the plant before and I saw it when I was there.

Q. You inspected the plant and you saw Mr. Klein, Mr. H. H. Klein and his brother, I. J. Klein? A. That is correct.

Q. And you talked to them, saw them most every day while you were there? A. Well, we spent a good deal of time. We were there socially. I don't know if we saw Mr. I. J. Klein every day.

Q. But you saw him quite frequently during your stay there for that period of time? A. That is correct. The hotel was sort of [8025] headquarters and we met there. We were out to the races one day, I remember; we visited a park; and I think we took a side trip, my wife and I took a side trip to Victoria; we flew over to Victoria.

Q. To Victoria? A. That is correct.

Q. It was a vacation for you and your wife in part and in part it was a business trip? A. That is correct.

Q. Now so far as the business part of the trip was concerned, there came a time when Mr. Klein talked to you about this subject of joining the family? A. That is correct.

Q. And that occurred down in the lobby of the Hotel Victoria, the Victoria Hotel in Victoria, British Columbia. A. That is correct, sir.

Q. Sometime in July of 1945? A. Sometime during our visit. I couldn't pinpoint the time.

Q. Sometime during July of 1945? A. I say I don't know whether it was July or the first week of August. It was during the time we were there. I think we were there till August the [8026] 2nd or 3rd.

Q. Do you remember whether that conversation was toward the end of your visit or at the beginning of your visit? A. No, sir, I couldn't. I think it was—I think it was—I know it was sometime after I received that telegram

from the office, which was the 24th, as testified. It was sometime after that.

Q. You don't know how long after that? A. No, sir, I really don't.

Q. But the conversation took place in the lobby of the hotel? A. That is correct, sir.

Q. Where there was no one else present? A. Well, the lobby is a very large place and there are a lot of people in the lobby, but we would generally have one or two couches on the side.

Q. You know what I mean, Mr. Alprin; there was no one present when Mr. Klein was conversing with you to overhear this conversation inviting you in as a member of the family? A. That is correct, sir.

Q. And that was while you and Mr. Klein were waiting for your wife or some other people to come [8627] down and join you going to dinner? A. We were waiting for the entire party. We would have dinner very frequently en masse.

Q. So you and Mr. Klein were waiting there for these other people to come, and for the first time he suggested to you that you become a member of the family? A. That is correct, sir.

Q. Now, on that occasion did Mr. Klein or any of his companies owe you any money? A. Only to the extent of legal fees for work done during the current period of 1945.

Q. Only for the current legal fees? A. That is correct.

Q. They paid you everything that you had asked them to pay you up to 1945? A. Everything that Mr. Klein recommended as the amount of the bill, which I was very happy to receive.

Q. And you always were satisfied with the amount that he recommended? A. No question about that.

Q. And you were paid in full? A. Yes, sir.

Q. Adequate compensation for the services that [8628] you rendered? A. Yes, sir.

Q. But on this occasion, the end of July or the beginning of August of 1945, out of a clear sky, Mr. Klein told you that he wanted you as a member of the family? A. I don't know if it was out of a clear sky, but that is what he told me.

Q. Well, it was out of a clear sky so far as you were concerned, wasn't it? A. That is correct.

Q. You never heard him say anything like that before? A. That is correct.

Q. So it was the first occasion where you had any intimation that he wanted you as a member of the family? A. That is correct, sir.

Q. And you say that in that conversation he told you "You have been loyal and you have been conscientious, I want you in the family, I want to have you come into the family; we will let you in on one of the corporations, and you can make some money"? A. I don't know if he said "we will let you in [8629] on one of the corporations." He said, "You will be in the Harwood picture."

Q. "You will be in the Harwood picture. We will let you in on one of the corporations, and you will make some money"? A. I don't remember him saying being in on one of the corporations. There was no discussion about one of the corporations.

Q. All he said was—— A. I will buy some stock in the company; that is all.

Q. Will you give me a chance. A. I am sorry.

Q. All he said was he will let you in on the Harwood picture and you will make some money? A. I will buy some stock in the company or companies, I don't remember.

Q. You don't remember? A. Whether he said company or companies.

Q. Did he say "buy some stock"? A. He said "buy some stock."

Q. And you said something to the effect that you were very grateful for this expression of his appreciation for what you had done, and you would be [8630] glad to come into the family? A. That is correct, sir.

Q. Now does that represent in full the entire substance of that conversation? A. I think he did mention also that "We will take it up after we get back to the States."

Q. Was there anything else? A. Substantially I think that is the conversation.

Q. There is nothing else that you can think of that you recall now that you can tell us about that conversation? A. Nothing that I can recollect at the moment, sir.

Q. Did you say anything more about it than to express your appreciation? A. No, sir.

Q. Did you ask him why he was doing this? A. No, sir; just then some of the party came down, and the conversation ended.

Q. It ended very abruptly when some people came down? A. Well, I don't know how abruptly. The conversation ended. There was no further discussion [8631] about it.

Q. And nothing more was said about it, from that day down until October the 3rd, 1945? A. That is correct, sir.

Q. Two or three months later? A. That is correct, sir.

Q. Now, isn't it the fact that on that occasion, or on some occasion when you were in Canada, Mr. Klein told you in substance that he was going to try to take care of those people who could contribute to the success of the Harwood venture, and if it worked out as he hoped it would, he would pay something by way of a commission or bonus? A. I don't remember any such conversation, Mr. Kiendl..

Q. Didn't he tell you that he would pay you so much per case? A. I don't remember any such conversation.

Q. That he would fix it up on a case basis? A. No, sir.

Q. Didn't he tell you that he was going to do the same thing for Mr. Koerner? A. No, sir.

Q. Didn't he tell you that he was going to [8632] do the same thing for Mr. Roer? A. No, sir.

Q. Didn't he tell you he was going to do the same thing for others? A. No, sir.

Q. Mr. Rosenberg ? A. No, sir.

Q. Now, the second conversation was October 3rd? A. That is correct, sir.

Q. Up to October 3rd, had you ever heard the name "Tivoli Trading Company" or "Tivoli Trading Corporation" or "Tivoli Trading, Inc." or "Tivoli Trading, S. A."? A. I had never heard the words "Tivoli Trading" or any combination of letters or words with it.

Q. And it was on that occasion for the first time you heard of this company, Tivoli Trading Company, as I call it? A. That is correct, when he told me to make out my check to the order of that company.

Q. I did not ask you what he told you. A. I am sorry.

Q. The first time you heard of that corporation? A. That is correct, sir.

[8633] Q. And he said, in that conversation, something about "in accordance with the conversation we had in Canada"? A. Along those general lines.

Q. Along those general lines. Now that conversation took place in your office? A. That is correct, sir.

Q. And did you make a memorandum of it? A. No, sir, I did not.

Q. Did you make any entry any where in any of your personal books or your professional books of that conversation, other than the issuance of your check, and the stub of your checkbook? A. No, sir, I did not.

Q. Have you the stub of that checkbook in court? A. The stub of the checkbook?

Q. That's right. A. No, sir.

Q. Has that been destroyed? A. No, sir.

Q. Is it available? A. It may be. I think so.

Q. Have you seen it in the last two years? A. No, sir.

[8634] Q. Have you looked for it in the last two years? A. No, sir; had no occasion to.

Q. I thought you said you looked at every scrap of paper you could find since your testimony before the grand jury? A. Yes, sir, I did.

Q. Well, now—— A. I had the check, Mr. Kiendl. I kept that as an evidence of my subscription, particularly because Internal Revenue always wants something to show your purchase price, and the check is the best evidence.

Q. But the check doesn't show what it is issued for but the check stub does, doesn't it? A. Sometimes.

Q. But in any event, you had the check and that was enough; you did not have to look at your check stub; is that what you want to tell us? A. That's right, the girl made out the——

Q. Is that what you want to tell us? A. Repeat the question.

Q. I said the check was enough, you did not want to go to the check stub, you did not think that [8635] was necessary; is that what you want to tell us? A. I did not think so. I had the check.

Q. Well, now, in this conversation—and this is the second conversation—— A. Yes, sir.

Q. —what else did Mr. Klein tell you, "In accordance with our conversation up in Vancouver"? A. I think there was general discussion, but not much about that, except that he said that he would hold the stock in escrow or in trust or hold it, and I said, "Fine, that is all right with me," or words to that effect.

Q. Is that all you recall about the conversation? A. That is all I presently recall, sir.

Q. That he told you that in accordance with the conversation he wanted you to make out a check to the order of the Tivoli Trading Company for $500? A. Yes, sir.

Q. Didn't he say that he and his associates had arranged for you to become a member of the family? A. I think so.

Q. Didn't he say that you were to be taken into [8636] the picture? A. I think so.

Q. Didn't he say that he would hold the stock? A. Yes, sir, he did.

Q. Well, now, when you had this talk with him about stock and $500, you did not know how much stock you were buying? A. That is correct, sir. He didn't mention the amount.

Q. And you did not inquire? A. No, sir.

Q. He said, "Make out a check for $500 for the Tivoli Trading Company," and you did not know whether it was for one share of stock or 10 shares of stock or 100 shares of stock or 500 shares of stock? A. I didn't know—I don't remember whether he mentioned what the par value was or not. I have no recollection of saying how much it was.

Q. So far as you recall you haven't the faintest recollection of how many shares of stock you were buying? A. That is correct.

Q. And you did not have the faintest recollection of how many shares of stock were issued by [8637] this company? A. That is correct, sir.

Q. Or how many shares could be issued by the company? A. That is correct, sir.

Q. You did not have any idea of its capitalization? A. Or its officers, directors, stockholders or anything else.

Q. Don't anticipate me, please, Mr. Alprin. We will come to that. A. All right.

Q. You did not have any idea about its capitalization? A. No, sir, I did not.

Q. And you did not ask anything about its capitalization? A. No, sir, I did not.

Q. And you did not know whether you were paying $1 a share or whether you were paying $500 for one share? A. That is correct, sir.

Q. And you did not make any entry that you recall anywhere regarding that transaction so far as the [8638] number of shares were concerned or the price per share? A. That is correct, sir.

Q. Now, you suggested to me that you did not even know the names of the officers and directors of the company? A. That is correct, sir.

Q. You were never an officer and director of Tivoli? A. I certainly was not, sir.

Q. And you never voted any stock in Tivoli at any time? A. And I never received a notice of a stockholders meeting.

Q. And you never received any notices of any meetings of Tivoli? A. That is correct, sir.

Q. And after this meeting of October 3rd, after this conversation with Mr. Klein on October 3rd of 1945, you never talked to him again about Tivoli at any time until when—March of 1947? A. That is correct.

Q. Now, during that period between October 3, 1945, when you gave him the check that he requested, [8639] according to you, for $500, you never asked him a word about Tivoli for at least a year and a half? A. That is correct, sir.

Q. And he never told you a word about Tivoli for at least a year and a half? A. That is correct, sir.

Q. And you never inquired from any other source about Tivoli during that year and a half? A. That is correct, sir.

The Court: I think we will interrupt and take a 10-minute recess.

(Short recess.)

[8640] *By Mr. Kiendl:*

Q. Mr. Alprin, after this October 3rd second conversation that I referred to, I want to come to the third one

in March 1947. Was that on the telephone? A. I don't recollect whether it was on the telephone or in person.

Q. And the substance of that very shortly stated is that Mr. Klein gave you some advance notice that he was going to liquidate and pay you off? A. That's correct.

Q. That was all that was said then, no amounts were mentioned? A. No, sir, he would advise me when he was ready.

Q. He would call you when he was ready? A. That's correct.

Q. And he did call you and that led up to the fourth conversation? A. That's right.

Q. And that was in his office in Baltimore? A. That's correct.

Q. In his private room or private office? A. In his private office in the suite that he occupied, that his company occupied.

[8641] Q. Is that the private office you have heard him describe here in court? A. Yes.

Q. It did have a little washroom in it? A. Yes, sir.

Q. About 4 x 6, something of that size? A. I don't know the size of it, but it was comparatively small.

Q. You were in it and you received the largest check you had ever had handed to you in your life? A. That's correct.

Q. And it was about 4 x 6, was it not? A. I don't recollect the size of the room, except comparatively it was a small room.

Q. When you got there, he told you that he wanted to talk to you about this situation? A .When I got to his office?

Q. Yes. A. He talked generally for a few minutes, I believe.

Q. In his office at that time you think was either Mr. Rosenberg or Mr. Rokoff or both of them? A. That's correct.

Q. Then there came a time when he took you to the washroom? [8642] A. Yes.

Q. What did he say, "Come on in here with me"? A. I don't recollect whether he said "Come on" or he just tugged at my sleeve. He indicated that we go in that general direction.

Q. He opened the door and you went into this little cubbyhole? A. Sir, the location of the room, as I remember it was almost in the center or off center of one side of the office.

Q. You don't remember what he said to you about that? A. No, sir, I do not.

Q. You do not remember what you said to him about that? A. About going into that small room?

Q. Yes. A. No, sir, I do not.

Q. You do not remember whether Mr. Rokoff—withdrawn.

Q. You don't remember Mr. Rokoff or Mr. Rosenberg saying anything about it? A. No, sir, I do not.

Q. You do not recall Mr. Klein having said, "Mr. Rokoff and Mr. Rosenberg, would you leave us a little while, I want to have a private talk with Mr. [8643] Alprin"? You recall nothing of that kind being said? A. No, I have no recollection of any conversation like that.

Q. Up to that time he had never mentioned anything about the check that he subsequently gave to you, so far as the amount was concerned? A. That's correct.

Q. Or anything about it at all? A. Except to come down and get a check, or he was winding up and I would get a return of my investment.

Q. The return of your investment? A. That's correct.

Q. When you got through the door into this little washroom, the two of you standing there, did he lock he door? A. I don't recollect whether he locked it or put it three-quarters or four-fifths ajar, something like that.

Q. It might have been open so far as you recollect? A. I think it was partly closed. How much closed, I don't know.

Q. In the course of your conversation with [8644] him in what I call a cubbyhole, washroom, as you call it, did he ever invoke or did he ever request you to keep this all secret and confidential? A. No, sir.

Q. Did he ever say or suggest to you, "Now, don't mention a word of this to a soul"? A. No, sir, he did not. I have no recollection of any words like that.

Q. Then or at any time did he ever make any such suggestion? A. No, sir.

Q. When he got in there and you got in there, he brought out two checks and handed them to you? A. Yes, sir.

Q. He said "One is for you and one is for Mr. Koerner"? A. Words to that effect, yes, sir.

Q. Did you look at them? A. I did.

Q. Did you see the amounts, $264,000 each? A. I certainly did, sir.

Q. And that was the first intimation or suggestion that you had had from any source that your investment of $500 back in 1945 produced in over [8645] a year and a half, two years, $264,000 profit? A. That's correct.

Q. When you first saw this check that he gave to you for you, what did you say to him; do you recall? A. I think he gave me both checks at one time.

Q. You looked at one and you saw it was for $264,000 and you looked at the other and saw that it was for $264,000, and he said one of them was for you? A. That's correct.

Q. What did you say? A. He kept talking, I didn't say anything.

Q. You didn't think? A. No, but my heart skipped a beat when I saw that amount.

Q. Your heart skipped a beat. Didn't you know it was figured on a per case basis and that was the reason it was $264,000 for both you and Mr. Koerner? A. No, sir, I did not.

Q. He kept on talking. Did you get any chance to talk after that? A. When he completed what he had to say.

Q. Then what did you say, after he had completed what he had to say? A. I said I would follow his instructions. [8646] I don't know whether I said thank you. If I didn't, I am sorry.

Q. You don't even know whether you said that to him, whether you said thank you to him, for this windfall of $264,000? A. Mr. Kiendl, I was so flabbergasted, I don't remember what happened after that.

Q. However, you remember what he said? A. I remember what he said.

Q. And you remember it was in the washroom? A. Yes, sir.

Q. And you remember he said it was the return on your investment of $500? A. Yes, sir, I do.

Q. You were so flabbergasted that you don't recall what you did or said thereafter? A. That's correct, sir.

Q. You went out of there in a dream? A. Floating on a cloud.

Q. Floating on a cloud? A. Yes, sir.

Q. Did you write him about it when you got back to New York? A. No, sir, I did not.

[8647] Q. No letter of any kind expressing your appreciation that you found in those papers that you went over? A. No, sir.

Q. Did you ever talk to him about it afterwards? A. We discussed the check in so far as the holding of it was concerned and my holding it in Canada.

Q. Did you ever discuss the amount of it? A. No, sir.

Q. You told Mr. Bauman you didn't know how that amount was computed? A. That's correct.

Q. And the check we are talking about is the check in the Tivoli bank record, Government's Exhibit 340, of March 27, the one I hold up (indicating)? A. That's correct, that is the photostat of the check all right.

Q. That is the check for you, with your endorsement on it, is it not? A. That is a check, endorsed over to the order of Irving Koerner.

Q. That is the Koerner check? A. That's correct.

Q. And this one is your check (indicating)? [8648] A. That's correct, that is the so-called my check.

Q. From the time you received that check at the end of March or the beginning of April, 1947, did you ever learn how that amount was computed? A. No, sir.

Q. Did you ever ask? A. No, sir.

Q. You said the check was for a very substantial amount in your direct or cross-examination? A. Yes, sir.

Q. It was the largest check that had ever come to you in your entire life? A. That's correct.

Q. You never inquired of anyone at any time how that amount was made up? A. No, sir. I think I explained those circumstances to the Internal Revenue Bureau.

Q. I asked you about the fact. A. I did not.

Q. You received this check surely after its date, March 27, 1947, did you not? A. Yes, sir.

Q. Within a matter of days? [8649] A. That's correct.

Q. When you received it, did you know what business Tivoli Trading Company was engaged in? A. No, sir.

Q. Did you ever ask? A. No, sir.

Q. Did you ever know whether it was engaged in any business at all? A. I didn't, except I assumed——

Q. I did not ask you to assume. A. I didn't ask.

Q. You did not know whether it was in the whiskey business or in the oil business or what kind of business it was engaged in? A. I did not know.

Q. You knew it had a bank account, didn't you? A. I didn't know it had a bank account.

Q. When you received the check, you knew it had a bank account, didn't you? A. No. That check is not a check, it is a bank draft on the Royal Bank of Canada.

Q. You knew that check represented funds belonging to Tivoli? A. From its order.

[8650] Q. From its order? A. Yes.

Q. Do you know where Tivoli got possession of the funds? A. No, sir.

Q. Did you ever inquire? A. No, sir.

Q. Did you know that Tivoli had a bank account in the Royal Bank of Canada in Montreal? A. No, sir.

Q. Did you know—— A. At least at that time, I have known since this trial.

Q. You have seen the bank statement since this trial? A. Yes.

Q. Since this trial you have learned that Tivoli had a bank account up there in Montreal with the Royal Bank of Canada in which it made very substantial deposits? A. And also one in New York, if I remember correctly.

Q. In which it made very substantial deposits? A. That's correct.

Q. Did you know that a deposit was made on [8651] April 30, 1945, of $500,000 in that Montreal account? A. I did not know until I saw the exhibit in court here.

Q. Did you know that a deposit was made of $581,000 in September of that year? A. No, sir, until I saw it in court here.

Q. Did you know that other deposits were made of two million, two hundred thousand-some-odd dollars in that bank account? A. No. The only deposit I knew was when my check was returned from the bank, the endorsement on the back said "Pay to the order of Tivoli Trading Company S. A." and showing a deposit into its account. That is the only reason I know it had an account.

Q. Are you finished? A. Yes, sir.

Q. When you saw this transcript in the courtroom of the deposits of the Tivoli Trading Company, did that refresh your recollection as to the source from which those deposits came? A. It didn't refresh my recollection.

Q. You haven't the faintest idea where Tivoli would get moneys in that amount? A. Except from the exhibit of the Tivoli book.

[8052] Q. Exhibit of the Tivoli book? A. Yes, sir.

Q. However, before you saw the Tivoli book and before you saw that bank statement, you had not the remotest idea where Tivoli would get funds in that amount? A. That's correct.

Q. You know the only source of any Tivoli funds was from Mr. Klein or corporations with which he was associated, don't you? A. I assumed it was in connection with the Harwood transaction.

Q. You knew, did you not, that all the Tivoli funds represented profits in the Harwood transaction? A. I didn't know that at all, sir. As a matter of fact, that is not a correct statement, according to the Tivoli books that are in evidence here in this court.

Q. Did you know of any source from which Tivoli would earn any money? A. I did not know. I could only presume it was from Harwood.

Q. Did you know of any activities of Tivoli in Harwood, the sale of Harwood? A. No, sir.

Q. Did you know of any activities of Tivoli [8053] in the sale of Auld Malcolm? A. No, sir.

Q. Or in the sale of John Dunbar? A. No, sir.

Q. Or in the sale of Highland Sandy or Jockey Cap or bulk whiskey? A. Or malt whiskey, no, sir.

Q. You haven't the faintest idea from what source Tivoli would receive any funds during this period, from the time you were first taken into the family, as you say, until you got this check of $264,000? A. That's correct.

Q. When Mr. Klein gave you those two checks, two drafts, he told you not to deposit your draft, didn't he? A. He told me not to deposit both of them, "Don't deposit them, hold on to it until I instruct you. Don't give Koerner's draft to him, hold it."

Q. Under no circumstances give Koerner his draft? A. That's correct.

Q. When he said to you "Don't deposit your check," did you ask him why? A. No, sir.

[8654] Q. Did he tell you why? A. I think he said that he had not completely wound up the transaction, that there were some odds and ends left. I have a hazy recollection, and I cannot be positive of it, his saying something about OPA or the OPA subpoenaing bank accounts or the action against R. C. Williams or something in connection with the OPA.

Q. That was about the end of March 1947? A. Yes, sir.

Q. He told you in a few days to deposit your draft, did he not? A. About approximately a month later, about the end of April or early part of May, he told me to take the draft up to Toronto and deposit it there in the Royal Bank of Canada in Toronto.

Q. Did he tell you that he knew the manager of the branch of the Royal Bank in Canada, Toronto? A. No, sir.

Q. Did he give you a letter of introduction to that bank? A. No, sir.

Q. Did you ask him for any? A. No, sir.

[8655] Q. You went up there with Mr. Haas, didn't you? A. That's correct.

Q. You knew Mr. Haas had been there before you? A. So Mr. Klein told me.

Q. Did Mr. Haas tell you that? A. I don't remember whether he did or not, I don't think he did.

Q. Didn't he tell you he had gone through the same kind of transaction, opening an account there in the Royal Bank of Canada in the Toronto office? A. Yes, I think he did, he told me he had an account up there and he told me the requirements.

Q. He told you he had a cousin up there who was an accountant? A. He asked if I knew anybody in Toronto that I could use to be a representative or subordinate officer of the company, since it was a requirement of the bank to have a resident officer to whom it could send notices. I told him I have not. He said, "I have a cousin up there, if you want to use him." I said I would be delighted.

Q. You did use his cousin at his suggestion and you paid him $50 for his services, acting as an assistant secretary of one of your companies? [8050] A. That's correct.

Q. You went up there after Mr. Klein had told you it was all right to deposit this check? A. That's correct.

Q. You didn't deposit Mr. Koerner's check? A. That's correct.

Q. That was because you had received instructions under no circumstances to deposit that one? A. It was because I received instructions from Mr. Klein to deposit my check, one check, and to keep on holding Koerner's check.

Q. He told you in substance, "You deposit the one, but hold the other"? A. That's correct.

Q. And that [illegible] the only reason why you did not deposit [illegible] A. That's correct.

Q. When you deposited [illegible] did you know anything about a Roer [illegible]?

Q. At that [illegible] A. [illegible] think so.

Q. Did Mr. Klein or Mr. [illegible] or anyone tell you that there was another check [illegible] of concern [8657] by the name [illegible] $2[illegible]000? A. I don't recollect knowing [illegible] sir.

Q. When [illegible] opened a bank account there, did you not? [illegible]

Q. And you [illegible] in three different companies? A. [illegible]

Q. And you [illegible] Mr. Klein's instructions, did you? A. No, sir.

Q. You did that out of [illegible] excess of caution? A. That's correct.

Q. And the excess [illegible] was to keep the $264,000 divided into three [illegible] intact in one? A. That's correct.

Q. You [illegible] that was because of the Federal Depo[illegible] A. That was my thought at the time.

Q. Tell us what was your thought about that. A. It was a very large amount of money and I felt morally responsible for it, and I felt [illegible] divided it into three accounts, if there were an I.D. [illegible] [8658] there, there was some pro[illegible] in three [illegible] rather than in one, and if my son had not been a minor at the time I would have divided it into four accounts.

Q. That fully explains your thought and idea in splitting it three ways? A. Yes.

Q. Why didn't you ask the bank manager about it? A. I didn't.

Q. I asked you why you didn't. A. I don't know why, sir.

Q. You opened the account with the bank manager or one of his representatives sitting right there with you, didn't you? A. That's correct.

Q. And you split the money three ways out of an excess of caution, because you thought possibly Canada had an FDIC law the same as there was in the United States? A. That's correct.

[805] Q. But you didn't ask the man anything about that at all? A. No.

Q. You didn't ask Mr. Glass anything about that? A. No, sir.

Q. Or his accountant, Mr. Davis? A. No, sir, I did not.

Q. Did you ascertain whether there was any FDIC in Canada at any time? A. I haven't to this day, sir.

Q. Now, when you did that, and split your deposit in three ways, the way you have described, did you tell Mr. Klein about it? A. I don't remember whether I told him I split it—I don't think I told him I put it in three accounts. I don't remember. I think I told him that I made the deposit.

Q. But you don't have any recollection of having told him that you split the deposit three ways? A. No, sir, I don't.

Q. Now shortly after you had made the deposit, it was frozen? A. Approximately the end of that month, as I was informed, about the end of May.

[8660] Q. The end of May? A. That is correct.

Q. And it was frozen by the action of the Canadian authorities? A. That is correct.

Q. And Mr. Klein told you that? A. I think he did.

Q. Didn't you get a letter from your bank advising you that it had been frozen? A. No, sir, I did not. I never did.

Q. Did you make any inquiry of the bank as to why it had been frozen? A. I did not. Mr. Klein told me to do nothing about it. He would take care of it.

Q. Did you make any demand on the bank to give you your funds? A. No, sir.

Q. Did you make any demand on the bank to give you Koerner's funds? A. Koerner's check was not deposited there, sir.

Q. No, but you had the draft? A. I had the draft.

Q. That was not frozen? [8661] A. I don't know whether it was or not. I had the draft.

Q. You don't know whether Mr. Koerner's draft was frozen or not? A. I do not, sir.

Q. You had it in your possession in your office safe or in a safe deposit box, didn't you? A. That is correct, sir.

Q. And you say you don't know whether that was frozen by the Canadian authorities when you had it in your possession here in the City of New York? A. I have no knowledge or any information that the Canadian Government froze that particular check. I don't——

Q. Mr. Alprin, you know it was never frozen, don't you? A. I don't know, sir. You asked me whether I knew. I don't know whether it was or was not.

Q. Well, you never received any notice that it was frozen? A. That is correct.

Q. Mr. Koerner never told you that it was frozen? A. That is correct.

[8062] Q. Mr. Klein never told you that it was frozen? A. That is correct.

Q. You never received any information from any source that it was frozen? A. That is correct, sir.

Q. You always had it in your possession? A. That's right.

Q. And no documents were served on you preventing you from doing anything you wanted with it? A. That is correct, sir.

By the Court:

Q. Did you ever learn that if the check had been presented for payment, whether the funds that were held to meet it were frozen? A. I don't know, sir. I never made any such inquiry.

The Court: All right.

By Mr. Kiendl:

Q. Now, Mr. Alpern, after the fund——

Mr. Kiendl: Withdrawn.

Q. Did you at any time ask Mr. Klein to give you any escrow agreement or any written instructions regarding the Koerner check or regarding your check? A. No, sir, I never did.

[8663] Q. You told someone, I think it was your counsel, that you had full trust and confidence in Mr. Klein? A. I certainly did, sir.

Q. And that was the reason that you proceeded as informally as you did proceed throughout this transaction? A. That is correct, sir.

Q. Did it occur to you as a lawyer that something might happen to him? A. It did not, sir.

Q. And if he died, there would be no scrap of paper to evidence the arrangements that you had made with him? A. That is correct, sir.

Q. And it had never occurred to you as a lawyer that you ought to have this documented? A. No, sir.

Q. You knew a — — A. Lawyers are their worst clients, Mr. Kiendl.

Q. You mean by that you were your worst client; is that what you are trying to say? A. I am my own worst client. I repeat myself.

Q. And you did repeat yourself in this situation? [8664] A. Yes, sir.

Q. And it never occurred to you to get any documentary proof of the situation regarding these two enormous checks? A. That is correct.

Q. Each over a quarter of a million dollars? A. That is correct.

Q. Now, there came a time in March — —

Mr. Kiendl: Withdrawn.

Q. There came a time in the middle of May of 1946 where you had a conversation with Mr. Klein in Baltimore; you recall testifying to that? A. Yes, sir.

Q. And on that occasion Mr. Jaburg, Mr. Jacobs and Mr. Koerner were having a conference with Mr. Klein? A. That is correct.

Q. About the winding up of the Harwood situation? A. Well, it was about the possibility of OPA ending or decontrol over whiskey ending, in which event the contract would terminate.

Q. It was about the termination of the Williams contract? A. Possible termination, yes, sir.

[866] Q. And it was then clearly indicated that OPA was coming to an end and they were making arrangements and considering what they would do in that event? A. There was a possibility of it and Mr. Williams was anticipating or trying to anticipate that possibility.

Q. There was more than a possibility of it. There was a real present probability of it, wasn't there, in May of 1946? A. We had that situation several times; possibly it was a little stronger at that time.

Q. Well, in any event after the discussion was over, at which the Williams people were present, you had a conversation with Mr. Klein alone, did you not? A. That is correct, sir.

Q. And in that conversation he suggested to you that at the end of the Harwood business it might be wise for you to go into business, did he not? A. Yes, sir, in general effect, general words to that effect.

Q. And you decided to follow his advice, didn't you? A. Yes, sir.

[8066] Q. And he told you that if you did go into business, he would throw as much business your way as he could? A. Not if I went into business. I would only go into business with an assurance that I had something to go into business with. His statement——

Q. As a result—— A. His statement to me was that at the end of OPA, with the possibility of the contract with Williams being over, he was considering the possibility of dividing the United States into several markets, and either some companies formed or to be formed or whoever he had in mind, he didn't say, would take over part of that; Williams would have part of that and he wanted to expand the business by going into Central and South American markets, and he indicated that he would give me some agencies, otherwise I wouldn't have gone into business.

Q. And he also indicated that shipping would probably be available? A. Yes, sir.

Q. It hadn't been available in Central and South America up to that time? A. That is correct, sir.

[8067] Q. And as a result of the picture that he had painted for you, you decided that you would like to go into that kind of business, did you not? A. Yes, sir, based on those assumptions, I certainly would.

Q. Based on those assumptions? A. Yes, sir.

Q. And he told you to form some Cuban corporations? A. That is correct.

Q. Now on your direct examination you told us that he told you to form four Cuban corporations for members of your family? A. That is correct.

Q. You recall that? A. That is correct, sir.

Q. When you so testified you were mistaken, weren't you? A. No, sir.

Q. He never told you any such thing, did he? A. He told me to form Cuban corporations for me and members of my family and then said four corporations.

Q. And he said four? [8668] A. That's right.

Q. Did he tell you why four? A. No, sir. I assumed——

Q. He didn't say one for your wife, one for your daughter and one for your son, anything of that kind, did he? A. No, sir, he did not.

Q. And your son was then a minor? A. That's correct, sir.

Q. How old was he? A. I think he was 18 years old; 18—in 1940, about 17 or 18 years of age.

Q. And when he told you to form four corporations, did he tell you that you would have a corporation for each brand? A. No, he did not.

Q. One for Harwood, one for Auld Malcolm, one for John Dunbar and one for the other? A. No, sir. The impression—I am sorry.

Q. Not the impression; what he said. A. I am sorry.

Q. He did not say anything to that effect? A. That is correct, sir.

Q. And did he tell you that he was going to [8669] have four corporations formed for Mr. Koerner, four corporations formed for Mr. Roer, four corporations formed for Mr. Rosenberg? A. No, sir. I believe he said that he was going to give the same opportunity to Mr. Koerner and Mr. Roer. I don't know whether he said Mr. Rosenberg. I remember those two.

Q. You know that Mr. Rosenberg only had one corporation, don't you? A. So I later found out.

Q. That was the Nancy Trading Company? A. That is correct.

Q. And that was a Cuban corporation that was formed on this trip to Cuba? A. I didn't know that, sir.

Q. You didn't know that? A. No, sir.

Q. You did not get any copy of the certificate of incorporation in the case of the Nancy Trading Company from Mr. Rosenberg, did you? A. No, sir.

Q. Now you went to Cuba to form these corporations? A. Yes, sir.

[8670] Q. Was that the purpose of your visit there, Mr. Alprin? A. Yes, sir.

Q. You knew you did not have to go to Cuba to form these corporations, didn't you? A. Mr. Rosenberg said it was necessary for us to be there.

Q. Mr. Rosenberg, the man who is now dead, told you it was necessary for you to be there; is that what you want to testify? A. Mr. Rosenberg, the man who is now dead and who had experience in forming Cuban corporations.

Q. You had been to Cuba before that trip, hadn't you? A. Yes, sir.

Q. You had investigated business conditions down there? A. Yes, I had.

Q. And, amongst other things, on your way down there, you were asked by Mr. Klein to see about buying a distillery? A. That is correct, sir.

Q. And when you went down there with these men, Mr. Roer and Mr. Koerner, and their wives, you [8671]

went down there to investigate the possibilities of doing business there, didn't you? A. First of all, I did not go down with them. Secondly, I did not go down to investigate the possibilities of doing business there.

Q. Well, you did not go down with them, but you went down there and met them there? A. That is correct, sir.

Q. And you say now you did not go down with the idea of investigating business? A. No, sir.

Q. Or soliciting business? A. No, sir.

Q. Well, you did investigate a lot of business in Cuba, didn't you, from time to time, and turn it down? A. Oh, later.

Q. After you had formed these corporations? A. Yes, sir.

Q. You investigated with a number of people, business men, lawyers and others in Cuba? A. That's right, when we found out that the purpose for which the corporations were formed could not be completed.

[8672] Q. The purposes for which the corporations had been formed could not be completed, is that what you said? A. That is correct, sir.

Q. What purposes do you refer to? A. The purpose of getting agencies for Harwood and other whiskeys through Central and South America.

Q. Well, these other businesses that you had investigated, those purposes were always available, were they not? A. I imagine those and many others.

Q. And you turned them all down and found it would be unwise for you to go through with that procedure because the Harwood did not develop in Central and South

America; is that what it comes to, Mr. Alprin? A. No, sir. That is a rather involved question. I turned them down because the propositions that were submitted to me were not suitable for my purpose, my temperament, necessities or what I thought of that type of business.

Q. What propositions were submitted to you? A. Mr. Valverde submitted a proposition to me of buying an hotel, building an hotel, financing an hotel, [8673] a motel, an air conditioning business in Cuba, various other businesses, mortgage investments.

Q. What were the various other businesses? A. I don't remember offhand. I can look at my file and tell you, Mr. Kiendl.

Q. Haven't you looked at your file before testifying? A. Yes, sir, but that was—of all the things that I was trying to look for, that was one of the most remote things I could think of that added any interest to this trial.

Q. Well, you know now that it is of interest to me. A. I said——

Q. Can you tell us how many business propositions were submitted to you? A. No, sir, I cannot.

Q. Were there a dozen, two dozen? A. I wouldn't speculate a guess, sir.

Q. But you know of five, I think you have mentioned, that Dr. Valverde suggested to you? A. Well——

Q. Is that right? A. Some were variations of the other. I don't [8674] know the number.

Q. When you went down to Cuba, did you first go to Dr. Moran's office? A. Mr. Rosenberg took me to Dr. Moran's office, yes. It was our first stop.

Q. And there you were advised, were you not, that they could not represent you? A. Mr. de Cubas said he could not represent us because he would not be the attorney for two parties to an agreement, if agreements had to be drawn.

Q. And he said he represented the Klein corporations? A. That is correct, sir.

Q. And he couldn't represent your corporations because he would be on both sides of the fence? A. That is correct.

Q. And did Dr. Moran confirm that? A. Dr. Moran left immediately.

Q. I say did he confirm it? A. I didn't speak to him. I never heard from him about that.

Q. So that as far as you know he did not confirm it? A. Technically, Dr. Moran never confirmed it or [8675] did not confirm it.

Q. So Dr. de Cubas took you over to the lawyer he recommended, Dr. Valverde? A. He introduced us to him, yes, sir.

Q. And from then on, Dr. Valverde took charge of incorporating these various companies? A. That is correct, sir.

Q. And you learned that some of the papers or all of the papers were prepared by Dr. Moran's office, or Dr. de Cubas or somebody in that— A. So Dr. Valverde testified in court. It was the first I heard of it.

Q. But in any event all that was done was to form the corporations? A. That is correct.

Q. And that was merely formal procedure, was it not? A. And making a deposit.

Q. And making a deposit? A. That is correct, sir.

Q. You opened bank accounts there for each one of the corporations of $500 each? A. That is correct, sir.

Q. And you paid Dr. Valverde for his services, [8676] $3,600 for 12 corporations? A. $300 per corporation.

Q. Your share of it was $1,200? A. That is correct, sir.

Q. And for all three of you in the 12 corporations it was $3,600? A. That is correct, sir.

Q. And Dr. Valverde made a charge, did he not, each month for his services to these four corporations of yours? A. As he explained to us, it was necessary for a Cuban attorney to be a representative or officer of the corporation for which he would make a charge, and for that he would give the use of his office in the event the corporations became active and needed him.

Q. And he charged you for that? A. Yes, sir he did.

Q. How much? A. $100 per year; $25 per quarter per corporation.

Q. And that was in addition to the $1,200 you paid for the formation of the corporation? A. That is correct.

[8677] Q. And the filing of the certificates of incorporation and the stamps and things like that? A. I think we paid him for that too, yes, sir.

Q. Now those corporations never functioned at any time? A. They never did, sir.

Q. And did you keep a set of books for the corporations? A. No, sir, we did not. There was no occasion for it.

Q. What did you have—take the case of Economica; what books or records did you keep for that? A. I had no books or records, Mr. Kiendl.

Q. None whatever? A. No books or records.

Q. You haven't any record of that corporation at all? A. What do you call a record, Mr. Kiendl?

Q. Well, you say you have no books or records. You haven't anything for that corporation? A. Well, I have the stock certificate—the——

Q. Stock certificate? A. Excuse me. I have the certificate of incorporation. I think I have a stock certificate. [8678] I think Valverde kept most of the papers.

Q. Did you ever ask him for them? A. No, sir.

Q. You never received them back from him, if he has any of the papers? A. No, sir.

Q. But you have a stock certificate and a certificate of incorporation? A. Yes, sir.

Q. Could I see the stock certificate? A. I haven't got it here, sir.

Q. Where is it? A. I think it is in my office or home.

Q. Is there one certificate or more than one certificate? A. I don't know whether one or more. Well, there were more than one. There is at least one for each corporation.

Q. And is the certificate of stock issued in your name for each corporation? A. I think they were issued—if I remember correctly, Mr. Kiendl, I think they were issued originally to either Dr. Valverde or Dr. Suarez or both of them.

[8679] Q. Were they endorsed in blank? A. If they were made out to their names, I am sure they were endorsed in blank.

Q. But there were no new certificates issued to you or to your wife or to your son or your daughter? A. No. I think they were——

Q. Do you have any minute books of the corporation? A. No, sir.

Q. Do you have any other books of the corporation? A. No, sir. I think we have a Spanish certificate and an English certificate, an English copy of the certificate.

Q. Of the certificate of incorporation? A. That is correct, sir.

Q. You had a bankbook, didn't you? A. We had a bankbook, yes.

Q. And you had a checkbook on that bank? A. Yes, sir. The bankbook, I think, was kept by Dr. Valverde. I had the checkbook, and each month he would send up the bank statements and accounts; I would sign them and send them back to him [8080] and he kept them. He had all those.

Q. Now was there a record kept of the receipts of Economica and the disbursements? A. You mean, a book of account?

Q. Book of account. A. No, sir, there was not.

Q. No entry made of the receipt of these two checks in the corporate records of Economica? A. No, sir. These were not corporate matters.

Q. You had a check to the order of that corporation? A. That is correct, sir.

Q. Which you subsequently deposited? A. That is correct, sir.

Q. And you kept no book of account for Economica reflecting that transaction? A. That is correct, sir. Economica was Morris Alprin, Mr. Kiendl.

Q. Economica was Morris Alprin. It was not I. J. Klein or H. H. Klein, was it? A. That is correct, sir.

Q. They had no stock interest in it? A. Any of it.

[8681] Q. They had no interest of any kind, character or description in any one of those corporations? A. That is correct.

Q. And, as a matter of fact, the $264,000 that you got, Mr. H. H. Klein never got one penny of it, did he? A. That is correct.

Q. And he never asked for a penny of it? A. That is correct.

Q. And so far as you know he never got or asked for a penny of Mr. Koerner's check of $264,000? A. So far as I know.

Q. And the same is true regarding Mr. Roer's check of $272,000? A. So far as I know, sir.

[8682] Q. You testified that you prepared the three exhibits, FM-1, 2 and 3, from Mr. Rosenberg's notes regarding those corporations? A. Yes, I did.

Q. And that you gave at least that record, so far as your four corporations were concerned, to Mr. Klein? A. That's correct.

Q. You knew Mr. Rosenberg, Mr. Klein's lawyer, had the sheets showing all that information, didn't you? A. He had that originally because I copied that information from his sheet.

Q. Will you tell us why you felt you had to give Mr. Klein a list of information that you had copied from his lawyer's sheets, showing exactly and precisely the same information? A. Mr. Klein asked me, that is the only reason I gave it to him.

Q. When he asked you, did you tell him, "Mr. Rosenberg has all that, I copied it from his records"? A. No, sir.

Q. Did you forget about that when he asked you about the information? A. Possibly. When he asked me for it, I gave it to him.

[8683] Q. There has been introduced in evidence here as your Exhibit FO this letter from Dr. Valverde to you under date of July 18, 1946. Do you recall that (handing to witness)? A. Yes, sir.

Q. That refers, does it not, to your letter of July 12th? A. That's correct.

Q. Have you got your letter of July 12th? A. I think I have.

Q. May I have it? A. I don't know if it is in the courtroom.

Mr. Donohue: I wouldn't know whether it is here, your Honor.

Mr. Kiendl: Will you look for it and get it for us tomorrow morning?

Mr. Donohue: Yes.

Q. There is another letter that referred to your Exhibit FB-2, a reference to a letter of October 4th, from Dr. Valverde to you. Do you have the original of that letter in court (handing to witness)? A. I don't know, sir. Mr. Donohue has my letters.

Mr. Donohue: What is the exhibit number, Mr. Kiendl?

Mr. Kiendl: Exhibit FB-2.

[8684] Q. And Exhibit FQ-1, from Dr. Valverde to you, says:

"I have received your letter of September 13th." That was a letter of September 13th, 1949, was it not?

A. Yes.

Q. Do you have that letter in court? A. I don't know.

Mr. Donohue: I find I have the letter of July 12th, Mr. Kiendl (handing to Mr. Kiendl).

Q. I show you a carbon copy of a letter of July 12, 1946, and ask you if you can identify that as the letter referred to in Dr. Valverde's letter to you, Exhibit FO? A. Yes, I think so.

Mr. Kiendl: May we have it marked for identification.

(Marked Defendant Klein's Exhibit FY for identification.)

Q. Was it the fact, Mr. Alprin, that you had purchased certificates of stock from Dr. Valverde and from Dr. Suarez? A. It is possible; I don't remember.

Q. You don't remember any such thing? [8685] A. I don't remember how it came about.

Q. Mr. Alprin, after your telephone call to Mr. Klein on February 29, 1952, you confirmed that conversation in writing, didn't you? A. Yes, sir.

Q. That was the first conversation that you had confirmed in writing up to that time, was it not? A. I confirmed many conversations with Mr. Klein.

Q. In writing? A. In writing.

Q. Did you confirm any conversations with him regarding your becoming a member of the family? A. No, sir, I did not.

Q. Regarding his making money for you? A. No, sir.

Q. Regarding your $500 investment in Tivoli? A. No, sir.

Q. However, you had confirmed many other conversations with him of a business nature? A. That's correct. His business.

Q. You never confirmed any so far as your business was oncerned? A. With the exception of that letter, I think, I am not sure, but I think because I wanted to advise him of the results of the talk with Mr. Rosenberg.

Q. When you say you think, it is your best [8686] recollection that the only time you confirmed any conversation you had with him regarding your business was this letter of March 4, 1952, that is in evidence? A. That's correct, so far as I can remember.

Q. You sent that letter in order to make a record of it, didn't you? A. No, sir.

Q. You didn't? Your letter—— A. Excuse me. I meant it to be a record of my talk with Mr. Rosenberg and advising Mr. Klein of the circumstances.

Q. You wanted it to be a record of your talk with Mr. Rosenberg, is that what you have just said? A. A record to the extent that you advise a man and keep a copy in your file. That is the record.

Q. Mr. Alprin, what you wanted to do in fact was make a record of your conversation with Mr. Klein? A. No, sir.

Q. In the first two paragraphs——

The Court: I am sorry to interrupt, but you stated the letter of March 4, 1952, was in evidence. Would you give us the number, please, so the record will indicate it.

Mr. Kiendl: Defendant Klein's Exhibit EZ-1.

The Court: Thank you.

[8687] Q. In the first two paragraphs of that letter, you referred to a conversation you had with Mr. Klein, and in the third to a conference with Ellis Rosenberg. A. Yes, the letter is so broken up into paragraphs, six paragraphs in all.

Q. You received, did you not, a letter from Mr. Klein's attorneys, dated March 12, 1952, which is Defendant Klein's Exhibit EZ-2 in evidence? A. I received that letter on March 19th.

Q. And you responded to it by your letter Defendant Klein's Exhibit EZ-3? A. On March 19th, and sent it down by hand.

Q. You knew did you not, that Mr. Klein through his attorneys had taken the categorical position that the statements contained in your letter of March 4, 1952, were not true? A. So Mr. McGuigan's letter states or Mr. Kilcullen's letter.

Q. That refers specifically to the statement in the first paragraph of your letter, "In accordance with our long-distance telephone conversation of last Friday, wherein you authorized me to turn Koerner's check over to him, I am arranging to do so upon preparation of the necessary papers."

[8688] In paragraph 1 of Mr. McGuigan's letter that is specifically denied, is it not? A. Yes, sir.

Q. Paragraph 2 of your letter states:

> "I am also, in accordance with our conversation, depositing my check which I have been holding upon your previous instructions."

That is specifically denied in paragraph two of Mr. McGuigan's letter, is it not? A. Yes, sir.

> Mr. Bauman: Your Honor, I think I am going to object to this line of questioning, because the exhibits are in evidence, they have been read to the jury, and they speak for themselves.
>
> The Court: Overruled.

Q. The third paragraph in your letter, referring to your conference with Mr. Ellis Rosenberg, is specifically denied in paragraph 3 of the letter of Mr. McGuigan, is it not? A. Paragraph number three?

Q. Yes. A. That's correct.

Q. There you are informed, are you not, that

> "Mr. Rosenberg categorically denies it and tells us that on the contrary he told you that [8689] whatever you did or did not do with regrad to any check held, possessed, or owned, by you or by Mr. Koerner or by any person acting for you or either of you or by any corporation in which you or either of you are interested, was and always has been entirely up to you and Mr. Klein has never given you

any instructions or made any request of you or either of you with regard to your or Mr. Koerner's holding, depositing, cashing, negotiating, or otherwise dealing with any check."?

A. Yes, sir, in the language of a general release he has everything covered, I think.

Q. You say in the language of what? A. It impressed, Mr. Kiendl, that he tried to cover every possible contingency.

Q. He tried to categorically and completely deny every statement in your letter to Mr. Klein? A. Yes, sir.

Q. When you received that letter on the date you mention in your letter, March 19, 1952, in the morning, you answered it by stating that you were going to stand on the record? A. That's correct.

[8690] Q. Did you do anything else about it? A. No, sir.

Q. Never at any time? A. Not that I remember.

Q. You did not get in touch with Mr. Rosenberg about it that you remember, did you? A. I don't remember.

Q. You didn't get in touch with Mr. Klein about it that you remember? A. No, sir.

Q. You didn't tell Mr. Klein by long-distance telephone or otherwise that you had gotten this letter from Mr. McGuigan in which he categorically denied your statement as to what occurred in your telephone conversation of February 29th? A. I did not, sir.

Q. Nor did you do that so far as Mr. Rosenberg was concerned? A. So far as I can remember, I did not.

Mr. Kiendl: If your Honor please, I think that is all I have. However, if I have omitted anything at the last minute could I cover it in a few minutes tomorrow morning?

The Court: Surely.

The jury is excused until 10.30 tomorrow morning.

* * *

August 11, 1955, 10:30 o'clock A. M.

[8707] ALBERT ROER, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Bauman:

Q. Mr. Roer, you received a draft of $272,000, did you not, from Tivoli Trading Company? A. I refuse to answer on the ground it will in- [8708] criminate me.

Q. Did you withhold the deposit of that draft upon the instructions of Hyman H. Klein because he told you he was in tax difficulties and he wanted you to do so until those tax difficulties were cleared up? A. I refuse to answer on the same ground.

Mr. Bauman: Your Honor, I see no point in further continuing with this witness, because it appears to me that he will invoke the Fifth Amendment on all questions relating to the fifth count.

The Court: I take it there is no cross examination?

Mr. Kiendl: None, your Honor.

Mr. Bender: None, your Honor.

Mr. Donohue: None, your Honor.

(Witness excused.)

* * *

IRVING KOERNER, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Bauman:

Q. Mr. Koerner, do you know Hyman H. Klein? A. I refuse to answer on the ground it may incriminate me.

Q. Did you at Hyman H. Klein's request go to [8709] Havana, Cuba in 1946, June, and at his request form four corporations? A. I refuse to answer.

Mr. Bauman: Your Honor, it again appears to me this witness will refuse to answer any questions directly or indirectly relating to the fifth count.

Mr. Kiendl: No cross.

The Court: You may step down.

Mr. Bauman: May I inform Mr. Koerner that he is released from the subpoena which has heretofore been served upon him.

(Witness excused.)

The Court: Bring the jury in.

(Jury present.)

* * *

MORRIS O. ALPRIN, resumed.

Mr. Kiendl: We have no further questions, your Honor.

Cross Examination by Mr. Bender:

Q. Mr. Alprin, with regard to your testimony yesterday as to the trip to Vancouver I think in 1945, it is a fact that Mr. Haas was not present at that conversation or conversations you had in Vancouver in July, 1945? [8710] A. That's correct.

Q. It is also true, is it not, that Mr. Haas never went to Cuba with you in June of 1946, as you have testified with regard to the formation of these Cuban corporations? A. That's correct.

Q. It is also true, is it not, that Mr. Haas was never present at the time you had your conversations with Mr. Klein after your Jaburg conference in May of 1946; is that correct? A. That's correct.

Q. It is also true, is it not, that Mr. Haas was not present at any time when you had any conversations with Mr. Klein with regard to your becoming a member of the family? A. That's correct.

Q. And he was also not present with you at the time any of the checks or drafts, I should say, were given to you by Mr. Klein? A. That's correct.

Q. You called Mr. Haas sometime shortly after you received your draft from Mr. Klein, didn't you? A. That's correct.

Q. I take it that would be sometime in April or [8711] May of 1947? A. I think so.

Q. Did you discuss with him at the time——

Mr. Bender: Withdrawn.

Q. Did you call him on the telephone, do you recall? A. I imagine so, in order to get together with him.

Q. Was it on the telephone or was it in his office or where was it that you thereafter discussed with him the draft that you received? A. I have a hazy recollection of conferring with him in his office.

Q. At the time that you discussed your draft with him at his office, did you discuss the tax aspects of the draft? A. Yes, sir.

Mr. Kiendl: That is objected to by the defendant Klein as not binding on him.

The Court: Sustained.

By Mr. Bender:

Q. Primarily, Mr. Alprin, would it be correct to say that that was the purpose of seeing Mr. Haas? A. Yes, sir.

[8712] Mr. Kiendl: May I have the same objection to this line, your Honor?

The Court: Yes.

A. That was the primary purpose.

Q. That was the primary purpose? A. Yes.

Q. You were concerned as to what his opinion was with regard to the tax aspects of the draft in so far as the restrictions had been placed upon it? A. I think it was more important as to when it was reportable. I don't think there was much discussion as to the nature of the taxes, which had always been determined to be capital gain, but when it was reportable.

Q. And it was Mr. Haas' opinion at that time that since there were restrictions placed upon it and you were told to hold the check, that it wasn't reportable in your 1947 tax return? A. Yes, sir, and he looked up some cases and told me where there were restrictions and I didn't have the use of the money, that it was not reportable until the year in which I had the use of the money.

Q. And that was his honest opinion?

[8713] Mr. Bauman: Just a moment. I object.
The Court: Sustained.

Q. And that opinion was based upon the information that you supplied him? A. That's correct.

Q. You indicated in your conversation with Mr. Klein before you received the draft or at the time that you received the draft, Mr. Klein indicated something to you that Mr. Haas might be able to help you with the bank account in Toronto? A. That's correct.

Q. How did that conversation come about? A. Mr. Klein asked me to make a deposit in the Royal Bank of Canada in Toronto and asked me whether I knew the mechanics, or whether I had opened any accounts in the Royal Bank or any Canadian bank, and I said no. He said Mr. Haas knew the mechanics, I should get in touch with him, and I did.

Q. You mean, in the event that you needed any help with regard to opening the account in Toronto? A. That's correct.

Q. At the time that you had this conversation, however, Mr. Klein did not mention to you that Mr. Haas had

any knowledge whatsoever about the issuance [8714] of the draft to you; is that correct? A. No, I don't think he did.

Q. That is a fact, isn't it, Mr. Klein never did mention it to you? A. I don't remember any conversation along those lines.

Q. The only reference that Mr. Klein made as far as Mr. Haas helping you with regard to the mechanics was in the event you needed some assistance in opening an account in Toronto? A. I would presume so.

Q. Mr. Haas has indicated in his statement to the Bureau of Internal Revenue and also to the Court and jury that in 1948, around tax time, he had a conversation with Mr. Klein in his office, wherein he asked Mr. Klein about the nature of the transaction wherein you received your draft. Do you remember that testimony? A. Yes, sir, generally.

[8715] Q. Generally. You remember Mr. Haas testifying to that effect here on the stand? A. Yes, sir.

Q. Now, did Mr. Haas at any time tell you——

Mr. Bender: Withdraw that.

Q. Did Mr. Haas tell you at or about the time of tax time in 1948 that he had such a conversation with Mr. Klein?

Mr. Kiendl: That is objected to, your Honor.

The Court: Sustained.

A. No, sir, I don't remember any such conversation.

Q. You have no recollection that he ever mentioned that to you? A. The only conversation I had with Mr. Haas around tax time, when he was preparing my tax return, was whether or not the check was still available to me, which I told him it was not.

Mr. Bauman: I wonder if I may ask that counsel fix the year about which he is now talking. I assume it is 1948.

Mr. Bender: I am sorry. I think I said tax time 1948.

[871c] Mr. Bauman: Oh, did you? I am sorry.

The Witness: I am presuming, Mr. Bender, that you mean in 1949 when you filed your 1948 tax return.

Mr. Bender: No, I am talking about—then I had better straighten that out. I see I confused you, too. Mr. Bauman, you are quite correct.

Q. I am talking now about tax time in 1948 for the filing of the '47 return. A. We had a similar discussion at that time. As a matter of fact, we had one practically every year when he asked whether or not the check was available to me, whether I used it

Q. Yes, I understand that your testimony was to that effect on direct. Now, at the time that Mr. Haas went up to Canada with you, to Toronto, at which time you were going to open up your account, your testimony is that Mr. Haas introduced you to the bank or the manager of the bank? A. Well, he first introduced me to Mr. Davis who met us in the lobby of the bank, to sign the necessary resolutions.

Edward Charles Holohan—By Government—
(Rebuttal)—Direct

Q. And then did Mr. Haas leave to go about his other business? [8717] A. My recollection is that he came in with us and I think he introduced me to Mr. O'Neill, the manager of the bank, and then left.

Q. And then he left? A. That's right.

Q. He went about his other business? A. That's right. We arranged to meet later in the day. I think he went sightseeing or shopping or something.

Q. And then he met you and you went back to New York together? A. That's right.

Mr. Bender: I have no further questions.

Mr. Donohue: I have no redirect examination, if it please your Honor, and the defendant Alprin rests.

The Court: In view of the fact that some areas may have been opened by the last cross, I am asking the Government and the remaining defendant if they have any further questions.

Mr. Kiendl: Defendant Klein has no more questions.

Mr. Bauman: The Government has no further questions, your Honor.

(Witness excused.)

[8718] The Court: Except for what transpired this morning, does the Government have any rebuttal?

Mr. Bauman: Yes, sir. Shall we call the witness on rebuttal?

The Court: Yes.

Mr. Bauman: Mr. Holohan.

EDWARD CHARLES HOLOHAN, called as a witness on behalf of the Government, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. Bauman:

Q. Mr. Holohan, you previously testified in this case? A. Yes, sir.

Q. That you were employed by the Royal Bank of Canada for a considerable period of time. My recollection is 41 years, is that right? A. That's correct.

Q. And that at the time of your leaving, sir, you were the agent of the Royal Bank of Canada here in New York? A. That is correct.

Mr. Bauman: May I have this marked for identification, please.

(Marked Government's Exhibit 408 for [8719] identification.)

Q. Mr. Holohan, I call your attention to Government's Exhibit 408 for identification. A. Yes, sir.

Q. Have you ever seen that document before? A. Yes, sir.

Q. On what date did you first see it? A. September 16, 1946.

Q. And after you received that document did you go somewhere? A. To the best of my recollection I brought the document to the office of Root, Clark, Buckner & Harlan.

Q. And while you were there did you make a telephone call? A. Yes, I did.

Q. Who did you call? A. Mr. Klein.

Q. And by Mr. Klein do you mean Hyman Harvey Klein? A. Yes, sir.

Q. Now will you tell me, please, to the best of your recollection, what you said to Mr. Klein and what he said to you. [8720] A. To the best of my recollection——

Mr. Kiendl: We object to that, if your Honor please. That has already been testified to on direct examination.

The Court: Overruled.

Mr. Bender: Defendant Haas will object to it as not binding on him, your Honor.

The Court: Sustained.

Mr. Donohue: Defendant Alprin objects on the same ground.

The Court: Sustained.

Q. What did you say to Mr. Klein and what did Mr. Klein say to you, Mr. Holohan? A. To the best of my recollection I conferred first with counsel to find out if——

Q. Well, never mind about your conference with counsel. Just tell us if you will about your telephone call. A. Very good. I called Mr. Klein in Baltimore and told him the bank had been served with a paper in connection with an OPA matter that called for the production of documents and to the best of my recollection he asked or requested that the documents be not submitted. I can't tell you [8721] exactly what I said but I believe I said that would be a matter for our attorneys to determine.

In that conversation Mr. Klein asked me to send certain Dominion Canada bonds up to Montreal for safekeeping.

I asked him to hold the phone. Then I consulted with counsel, and after I had an opinion I said we would do that, and in keeping with his request we would do it as soon as possible.

Q. And did you ask Mr. Klein to send you something? A. Yes, I asked Mr. Klein, to the best of my recollection, to send me confirmations immediately covering the verbal instructions.

Q. And did you have at the time you asked Mr. Klein any such written instructions? A. Well, I can recall none or I don't think I would have asked for confirmations.

Q. Now, I show you Government's Exhibits 314, 303 and 309 and call your attention to the letters contained on the righthand side of each of those folders. A. Yes.

The Court: You mean the lefthand side, do you not?

[8722] The Witness: Left hand, is it?

Q. To your left hand side, yes, that's right. Are those the letters that you received after your call with Mr. Klein? A. As far as I am able to determine, yes.

Q. Now, calling your attention again to Government's Exhibit 408 for identification, Mr. Holohan, did you make any note in your own handwriting thereon? A. Yes. I wrote on here September 16th.

Q. And was that document thereafter a record kept in the usual course of business by your bank? A. As far as I know it was.

Mr. Bauman: I offer it in evidence, sir.

Mr. Kiendl: We have no objection.

Mr. Bender: The defendant Haas, your Honor, will object to the exhibit on the ground that it is not binding as to him.

Mr. Donohue: Defendant Alprin objects on the ground that the document is not binding as to him, your Honor.

The Court: Government's 408 is received without objection by the defendant Klein, the objection of the defendants Haas and Alprin thereto being sustained.

(Marked Government's Exhibit 408 in evidence.)

[8723] Mr. Bauman: Mr. Kiendl, I don't intend to read all of this, I just intend to summarize it. You may want to stand by with me while I read it to the jury.

Mr. Kiendl: All right.

(Mr. Bauman summarizes Government's Exhibit 408 to jury.)

Mr. Bauman: Would you want to read any more of this than I did, Mr. Kiendl?

Mr. Kiendl: No.

By Mr. Bauman:

Q. Mr. Holohan, did you return to the bank? A. Yes, I did.

Q. What did you do then? A. To the best of my recollection I instructed one of the security men of the instruc-

tions we had and asked them to send out the bonds to Montreal for safekeeping as soon as they could, and I think I added that day if at all possible.

Mr. Bauman: That is all.

The Court: May I ask the witness a question first, Mr. Kiendl?

Mr. Kiendl: Certainly, your Honor.

[8724] *By The Court*:

Q. Where did you get Government's Exhibit 408 before you came to this trial, Mr. Holohan? A. Is that the exhibit, your Honor?

Q. Yes. Where did you get that paper on which you claim you wrote "September 16"? A. In the office of the Royal Bank of Canada.

Q. Did Mr. Brown make any statement to you of having made a search of all of the documents in conection with this case?

Mr. Bauman: May I be of assistance to the Court in this case?

The Court: No. Mr. Brown came here and said all he could find was a subpoena. Now a notice to make an inspection crops up and I want to get to the bottom of it. I want to know why Mr. Brown didn't bring it here when he came.

By the Court:

Q. Do you know? A. No, I don't know the answer to that.

The Court: You may continue, Mr. Kiendl.

Cross Examination by Mr. Kiendl:

Q. When was this called to your attention after your testimony in whenever it was, July, May, April, [8725] whenever you testified? A. I saw it about two weeks ago when I happened to be in the bank.

Q. And the United States attorney had been in touch with you to come back to be interviewed in connection with your testimony; is that right? A. It wasn't long after I saw it in the bank when they said they had a subpoena to produce some additional papers or any additional papers that I was called in before the U. S. attorney.

Q. You knew this was a request to permit somebody to examine certain documents? A. Well, I don't know—I knew it was a request or an order. I think it was a request.

Q. It says "You are hereby required to permit. . ." You read it? A. I read it here again, yes.

Q. You put the penciled notation on it "September 16"? A. Yes, sir.

Q. And that is copied from the date on the bottom, September 16, is it not? A. It agrees with it.

Q. You took it over to Root, Clark, your attor- [8726] neys? A. That is my recollection.

Q. You haven't any record of that, you are just relying on your recollection? A. That's correct, Mr. Kiendl.

Q. Do you know whether it was in the morning or in the afternoon? A. I have a recollection——

Q. Do you know? A. My best recollection is I don't know.

Q. You don't know whether it was in the morning or afternoon? A. I thought it was in the early afternoon.

Q. If it were in the early afternoon, to the best of your recollection you called up Mr. Klein earlier that afternoon in Baltimore, did you not? A. After I had finished—that is, after I had talked with the attorney. I don't know how long it was then.

Q. It must have been in the afternoon—— A. Yes, sir.

Q. —of September 16, 1946, that you called Mr. Klein? A. To the best of recollection, yes.

[8727] Q. After you called him that afternoon, you had a conversation with him in which you told him that this requirement or this request had been served on you and you have been talking to your lawyers, and he told you to transfer securities to Canada? A. That is my recollection, yes, sir.

Q. You don't transfer securities amounting to $8,000,000, your bank doesn't, as a matter of practice, without getting a written confirmation, do you? A. We take verbal instructions on certain types of transactions, where there isn't any particular risk.

Q. On this type of transaction you wanted a written confirmation and told Mr. Klein you wanted a written confirmation? A. Yes.

Q. You had in your files at that time letters written by Mr. Klein requesting the transfer of these securities, didn't you? A. I am not aware of that.

Q. You know now there are letters in your file dated September 12th, four days before September 16th? A. Yes, sir, I do.

[8728] Q. Directing you to transfer for safekeeping securities in the accounts of three concerns, amounting to over $8,000,000, you know that, don't you? A. Yes, sir.

Q. Have you seen those letters again this morning? A. Pardon me?

Q. Have you seen those letters again this morning, the letters of September 12th? A. No, I don't think so this morning. I have seen them.

Q. Here is one of them (handing to witness). A. Yes.

Q. You saw that this morning? A. Yes, I saw three of them.

Q. That doesn't refer to any conversation that Mr. Klein had with you? A. That's correct.

Q. Have you the originals of those letters? A. I have nothing.

Q. Who has the originals of those letters?

Mr. Bauman: I do, Mr. Kiendl.

Mr. Kiendl: May I have them?

[8729] Mr. Bauman: Surely. We will have to send down for them.

By Mr. Kiendl:

Q. Is it the practice of your bank to stamp the receipt of letters as they come into the bank? A. As far as I know, it is.

Q. Have you seen the originals of these letters? A. I have.

Q. And are they stamped? A. No, sir.

Q. Do you know why not? A. No.

Q. Did you come in on Monday to be examined regarding your knowledge of this situation by Mr. Tyler, who just left the courtroom? A. Pardon?

Q. I am sorry, Mr. Holohan. A. I am sorry, too.

Q. I should speak a little louder. I forgot you are a little hard of hearing.

You came in Monday to the United States attorney's office? A. That is true.

Q. And you went over this in great detail with [8730] Mr. Tyler of the United States attorney's office, didn't you? A. Yes, we did.

Q. He showed you the original of these three letters? A. That's correct.

Q. All of which were in the exact language of the letter of September 12th regarding the Waldorf account that I just showed you? A. Yes, he showed me those, the originals.

Q. Is there any notation on any of those original letters that were received by your bank on September 16th? A. I think not.

Q. If your bank received a letter on September 16th dated September 12th, it would make some note of it or some record of it? A. Not necessarily. If it was received in an envelope addressed to some individual, it in all probability wouldn't have a receipt date on it. If it came in the general run of correspondence, as far as my recollection goes it would have a receipt date on it.

Q. You mean, if it came in by hand it wouldn't [8731] have any receipt on it and if it came in by mail it would have? A. I don't mean that. I mean, it might have come by hand or it might have come by mail, but if it was ad-

dressed to an individual, it might well be that a receipt stamp wouldn't appear on the face of the letter.

Q. Did letters in the ordinary course come to your attention as the manager of that bank? A. Would letters ordinarily?

Q. Did these letters come to your attention as the manager of that bank? A. Yes, they came to my attention and I signified it by putting my initial on them.

Q. So you have your initial on each one of the originals of these three letters? A. That's correct.

Q. And no notation anywhere that they were received on September 16th? A. No, sir.

Q. And no notation anywhere that the letters were dated four days before the receipt of this request for an inspection? A. I am sorry, but, Mr. Kiendl, I didn't hear you [8732] correctly.

Q. There is no notation on the original letters in your handwriting other than the one, your initials? A. That's correct.

Mr. Kiendl: May I have the originals now?

Mr. Bauman: Mr. De Franco has gone down for them. They will be here momentarily.

The Court: All right.

By Mr. Kiendl:

Q. Were you shown the attachment book of the Royal Bank of Canada that is in evidence here as Government's Exhibit 407? A. I am sorry, but I can't hear you.

Q. It is all my fault. Were you shown the attachment book of the Royal Bank of Canada, Government's Exhibit 407? A. No, sir, to the best of my knowledge I haven't seen that book.

Q. You never saw that at any time? A. I don't know about that.

Q. You never saw it in connection with your examination by the government officials; they never [8733] showed you this book, so far as you recall? A. Not to the best of my recollection.

Q. At any time? A. No, sir, not to the best of my recollection.

Mr. Kiendl: With the exception of those three original letters I have no further questions, your Honor.

The Court: We will wait for them.

By Mr. Kiendl:

Q. While we are waiting for them, Mr. Holohan, you might tell me, if you will, whether your initials appear on the photostatic copy of the September 12th letter from Waldorf & Company in Government's Exhibit 314? A. That is my initial, Mr. Kiendl (indicating).

Q. And does that same initial appear on the other two letters of September 12, 1946? A. That is my initial and that is my initial (indicating).

Q. When you say that is your initial, that is your initial on the photostatic copy of the September 12th letter in Government's Exhibit 309, of the Seaboard Syndicate? A. Yes.

[8734] Q. In the Regan Potter file, the September 12th letter also bears your initial in about the same location? A. Yes, sir.

Q. And that is Government's Exhibit 303? A. 303, yes.

Q. You know now positively that those letters came to your attention? A. Yes, sir.

Mr. Bauman: May the record indicate that I am handing the originals of these three letters to Mr. Kiendl?

The Court: Yes.

By Mr. Kiendl:

Q. I show you the originals of those three letters and ask you if those are the originals of the letters you referred to and concerning which I have examined you? A. Yes, sir.

[8735] Q. Now, from your examination of them, can you tell us positively that the only notation on any of them, in your handwriting is the initial that you refer to? A. That is correct.

Q. And there are other initials on there: whose are those? A. I don't know.

Q. Somebody in the employ of the bank? A. I would assume somebody in charge of safekeeping, who actually dispatched the bonds and looked after the transaction.

Mr. Kiendl: That is all I have, your Honor.

Mr. Bender: I have no questions.

Mr. Donohue: I have no questions.

Mr. Bauman: I have no further questions, but since these originals have been discussed, may I have the Court's permission to insert the original letters into the bank folders which contain the carbon copies?

The Court: Surely. May I see them?

Mr. Bauman: Yes, your Honor.

(Handed to the Court.)

[8736] The Court: All right.

Mr. Bauman: I believe that is all, Mr. Holohan. Thank you very much.

Mr. Kiendl: Just one further question, Mr. Holohan, that I forgot.

By Mr. Kiendl:

Q. The $8,000,000 of securities were transferred on the afternoon of September 16th, were they not, in fact? A. The records so state.

Q. Do the records state the time when they were transferred? A. I don't think so. The records were here when I previously testified.

Q. But your recollection is that the records show they were transferred on the afternoon of September 16th? A. Afternoon or evening of the 16th, yes.

Mr. Kiendl: That is all.

(Witness excused.)

Mr. Bauman: Mr. MacDonald.

[8737] STEWART MACDONALD, called as a witnes on behalf of the Government, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. Bauman:

Q. Mr. MacDonald, by whom are you employed? A. The Royal Bank of Canada.

Q. In what capacity, sir? A. I am the accountant.

Q. How long have you been employed by the Royal Bank of Canada? A. In New York since November 15th.

Q. And before that? A. I was in Montreal.

Q. For how long?

Mr. Bender: Can't hear him.

Q. Will you speak up a little louder, please, so counsel can hear you? A. Yes.

Q. Before you came down to New York, Mr. MacDonald, how long were you employed by the Royal Bank of Canada? A. Since 1949, July, and I was employed before that, too.

Mr. Kiendl: A little louder, please, Mr. [8738] MacDonald.

A. I started in 1940 and I worked until 1942, and I returned in 1949.

Mr. Bauman: May I have this marked for identification.

(Marked Government's Exhibit 409 for identification.)

Q. Mr. MacDonald, on or about July 28, 1955, were you served with a subpoena, and I show you Government's Exhibit 409 for identification—were you served with a copy of that subpoena, Mr. MacDonald? A. Yes, we were.

Q. And thereafter, and pursuant to that subpoena, did you produce Government's Exhibit 408 in evidence? A. Yes.

Q. Where did you get that Exhibit 408 in evidence from? A. From the office of Dewey, Ballantine.

Mr. Bauman: That is all, sir.

Cross Examination by Mr. Kiendl:

Q. You got the subpoena or whatever it is, the request or the requirement, Exhibit 408 in evidence, from the office of the attorneys for the bank? A. That is correct.

[8739] Q. It wasn't in the bank, itself, that you obtained it; it was in the office of Root, Clark, Ballantine, now the Dewey firm? A. That's correct.

Mr. Kiendl: That is all.

Mr. Bender: No questions.

Mr. Donohue: I have no questions, your Honor.

Mr. Bauman: That is all, sir.

(Witness excused.)

Mr. Bauman: Government rests, your Honor.

The Court: Government's case?

Mr. Bauman: Yes, your Honor, that is the Government's case.

The Court: Defendant Klein's case?

Mr. Kiendl: Defendant Klein rests.

Defendant Haas' case?

Mr. Bender: Yes, your Honor.

Mr. Donohue: Defendant Alprin rests, your Honor.

The Court: The jury may have a 15-minute recess.

(Jury left the courtroom.)

Motions for Judgment of Acquittal After Close of Case

The Court: Wasn't there supposed to be some [8740] stipulation between the parties regarding figures in excess of $8,000,00? Do you remember what I am referring to?

Mr. Bauman: Yes, I do.

The Court: There was a question as to any money beyond the $8,000,000 going to Canada. In the absence of that and the parties having all put in their cases, I won't permit any reference to anything beyond the $8,000,000 on summation.

Mr. Bauman: That is satisfactory, your Honor.

The Court: All right. So that the only thing that we have concerning us on the question of flight is the $8,000,000 in bonds of Waldorf, Regan Potter, and Seabord Syndicate, covered by the three letters which were the subject of Holohan's testimony.

Mr. Bauman: That is satisfactory, sir. I understand that to be so.

The Court: All right, because I didn't want to interrupt any summation. It is embarrassing to the Court and the jury and counsel.

Now it would appear that now would be the appropriate time for motions.

* * *

[8770] The Court: Any motions, gentlemen?

Mr. Kiendl: The defendant Klein would like to renew on the record its motion for a judgment of acquittal as to the sole remaining count, on all of the counts he asserted on the close of the Government's case and on the additional ground now that on the entire case it appears as a matter of law that a verdict of guilty could not be found in this case.

The Court: Denied.

Mr. Donohue: May I read a rather brief motion into the record, your Honor?

The Court: Surely.

Mr. Donohue: The defendant Alprin moves for a judgment of acquittal on the remaining count of the indictment on the following grounds:

First, there is a fatal variance between the allegation of a single conspiracy and the proof of several conspiracies under the circumstances of this case where the proof regarding each conspiracy is not short and simple, proof of more than one conspiracy under the fifth count is prejudicial error. Citing Berger vs. U. S., 295 U. S. 79, as construed in Kotteakus vs. United States, 328 U. S., page 750.

[8771] Secondly, there is an insufficiency of evidence regarding the defendant Alprin under the fifth count. See memorandum in support of the defendant Alprin's motion. That there is an insufficiency of evidence as to him on the fifth count, submitted in connection with our motion for reconsideration of the Court's denial of our motion for judgment of acquittal at the close of the Government's case. Reference is made also to pages 51 and following of our memorandum in support of our motion for a judgment of acquittal.

Third, proof under the fifth count demonstrates that it is part of one facet of the conspiracy charged in the fourth count, and hence should have fallen with the fourth count. See our memorandum on this point submitted in support of our motion for a judgment of acquittal.

Fourth, the conspiracy charged in the fifth count under either of two possible theories is barred by the three-year statute of limitations. See pages 57 and following of our memorandum in support of our motion for judgment of acquittal.

Fifth, there is no proof whatever of impeding collection of taxes as distinguished from assessment [8772] of taxes.

Sixth, when, as here, the Government indicts for conspiracy to defraud two sets of alleged conspirators, each of whom tell conflicting stories, it is seeking to evade perjury and false statement statutes which should govern.

Last, and final, where the proof shows that a conspiracy to evade income taxes is charged under the guise of the conspiracy to defraud the United States, the latter must fall.

For these reasons, we move, your Honor, for a judgment of acquittal for the defendant Alprin.

The Court: Denied.

Mr. Bender: The defendant Haas, your Honor, moves for a judgment of acquittal on the same ground that he urged on his motion at the end of the Government's case, and for the further reason that on the three hypotheses under which your Honor has indicated the jury might find a possible verdict here, and as your Honor has outlined on his opinion for the motions for acquittal, it is clear that there is no evidence, there is no substantial evidence in this record, at this moment, upon which the jury could base a verdict under any one of those three

[8773] hypotheses to convict the defendant Haas of the conspiracy charged in the fifth count. I feel that the evidence is so insufficient, your Honor, that in its present state it would support a motion to set aside a verdict if there ever was a verdict of guilty.

On that basis. I move for a judgment of acquittal.

The Court: Denied.

* * *

The Court: Then we are in adjournment. On Monday at 2:15 the Court will give its rulings on the requests to charge.

(Adjourned until August 15, 1955, at 2:15 p. m.)

Government's Requests to Charge

REQUEST No. 3

Granted

Don't think because I rule against a lawyer that I think his cause is unjust or weak, or because I rule in favor of a lawyer that I think his cause is right. Those are matters of law. My attitude toward the lawyers, or anything that I have done in the course of the trial is not to influence you in the slightest degree.

From the charge in *United States* v. *Lustig*, affirmed 163 F. 2d 85 (2nd Cir. 1947).

REQUEST No. 4

Denied—Except As Adequately Covered in Other Language in the Charge

While the accused at the beginning of a trial is presumed innocent, when the evidence shows his guilt beyond a reasonable doubt, that presumption of innocence disappears.

Shepard v. *United States*, 236 Fed. 73 (9th Cir. 1916).

REQUEST No. 5

Granted As Amended

Now, the question that naturally comes up is, What is a reasonable doubt? The words almost define themselves: It is a doubt founded in reason. It means a doubt which a reasonable person has after carefully weighing all the evidence.* Reasonable doubt is a doubt which appeals to your reason, your judgment, your common sense and understanding. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

From Judge Weinfeld's charge in *United States* v. *Bruswitz, affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

*This sentence in the request as originally made was: "That there is a doubt founded in reason, and arising out of the evidence in the case."

REQUEST No. 6

Although the burden is on the government to prove the defendant's guilt beyond a reasonable doubt, this does not mean that the government's proof as to each item of evidence or as to each link in the chain of alleged events must itself be proved beyond a reasonable doubt. Rather the process of drawing inferences from the proof is to be governed by human experience. The strict requirement as to burden of proof constitutes an over-all admonition or warning, rather than a precise yardstick to be applied to each segment of the proof.

United States v. *Hall*, 198 F. 2d 726, 730-1 (2nd Cir. 1952).

REQUEST No. 7

REASONABLE DOUBT

It is not necessary for the Government to prove the guilt of the defendant beyond a possible doubt. If that were the rule, few men, however guilty they might be, would be convicted. The reason would be that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough if proved that the defendant's guilt be established beyond a reasonable doubt—not beyond all possible doubt.

From the charge of Judge Knox in *United States* v. *Miller*, aff'd. *Miller* v. *United States*, 24 F. 2d 353 (2nd Cir. 1928).

REQUEST No. 8

Denied—Except As Adequately Covered in Other Language in the Charge

A reasonable doubt does not mean a fanciful doubt; nor does it mean a capricious doubt. It does mean a doubt born of a reluctance upon the part of a jury to perform an unpleasant task, nor does it mean a doubt growing out of the sympathy or sorrow for the defendant or anyone connected with him, but it does mean a doubt which is reasonable in view of all the evidence in the case.

A portion of Judge Knox's charge in the *Miller-Dougherty* case; conviction affirmed in *Miller* v. *United States*, 24 F. 2d 353 (2nd Cir. 1928).

REQUEST No. 9

Granted As Amended

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon the defendants, if they are convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, [prejudice]* or sympathy, or any inferences not warranted by the facts.

From Judge Weinfeld's charge in *United States* v. *Bruswitz, affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

*The word "prejudice" was added by the court.

REQUEST NO. 10

I charge you that in this case there is sufficient evidence upon which, if you believe it, you may find the defendants guilty of the crime charged in the indictment. Charge in *Carroll* v. *United States*, affirmed at 16 F. 2d 951 (2nd Cir. 1927). Charge of Judge Simon H. Rifkind in *United States* v. *Goldstein*, affirmed at 168 F. 2d 1000 (2nd Cir. 1948).

REQUEST NO. 11

Circumstantial evidence may be received and is entitled to such consideration as you may find it deserves depending upon the inferences you think it [necessary and]* reasonable to draw from such evidence. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case you** must be convinced beyond a reasonable doubt of the guilt of the defendants. Circumstantial evidence consists of facts proved from which you** may infer by process of reasoning other facts sought to be established as true.

From the charge of Judge Medina in *United States* v. *Foster*, 9 F. R. D. 367, 391 (1949), *affirmed sub nom. United States* v. *Dennis*, 183 F. 2d 201 (2nd Cir. 1950), affirmed 341 U. S. 494.

REQUEST NO. 12

If the evidence is sufficient to convince beyond a reasonable doubt that the charge is true it is immaterial whether

*The words in brackets were omitted by the court.

**The word "you" was substituted by the court in each instance for the words "the jury".

it be circumstantial or direct. Guilt can be satisfactorily established from "a 'development and a collocation of circumstances'." *Glasser* v. *United States*, 315 U. S. 60, 80, 62 S. Ct. 457, 469, 86 L. Ed. 680.

From *Penosi* v. *United States*, 206 F 2d 529, 530 (9th Cir., 1953).

REQUEST NO. 13

Granted As Amend

We are not concerned with the question as to whether or not the government will collect any income taxes from the defendants or whether liens have been filed, or whether in any civil proceeding the defendants will be required to pay any additional taxes on income. The prosecution has, for its object, the enforcement of those criminal sanctions set up by the Congress against those who wilfully conspire to obstruct the governmental function of collection of taxes rightfully due. The outcome of this case will not determine the amount of taxes and civil penalties, if any, which the defendants, or any of them, may ultimately be required to pay. That is not before you.

From Judge Weinfeld's charge in *United States* v. *Bruswitz*, *affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

not about: We are not concerned with the question as to whether or not the government will collect the tax, or whether liens have been filed, or whether in any civil proceeding the defendants have paid or will pay the taxes claimed to be due. The prosecution has, for its object, the enforcement of those criminal sanctions set up by the Congress against those who wilfully attempt to evade and defeat the payment of taxes rightfully due. The outcome of this case will not determine the amount of taxes and civil penalties, if any, which the defendants, or either of them, may ultimately be required to pay. That is not before you.

From Judge Weinfeld's charge in United States v. Bruswitz, affirmed 219 F.2d 59, 62-3 (2nd Cir. 1955), cert. denied 349 U.S. 913.

REQUEST NO. 19

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that a man may not shut his eyes to obvious facts and say he does not know. He may not close his observation and knowledge of things that are put out in the open and that are obvious to him, and say, "I have no knowledge of those facts." He must exercise such intelligence as he has, and if the evidence shows that he believed he was taxable but desired and intended to conceal the truth about his income and his taxes from the government, then, of course, he was not acting in good faith.

From Judge Weinfeld's charge in *United States* v. *Bruswitz, affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

REQUEST NO. 20

Granted As Amended

Intent involves a mental attitude, and it rarely can be shown except by inference. Intent is to be gathered mainly from the surrounding circumstances, the knowledge that the defendant is shown to have of what was being done and the natural inferences flowing therefrom.

From the charge in *United States* v. *Platt, affirmed* 182 F. 2d 469, 471 (2nd Cir. 1950).

REQUEST NO. 30 — Granted As Amended

For two or more persons to conspire, confederate or combine together to ~~commit or cause to be committed a breach of the criminal law of~~ defraud the United States is an offense of grave character. It is almost always characterized by secrecy, rendering detection difficult and requiring much time for its discovery. ~~Because of this, the statute has made conspiracy to commit a crime, a distinct offense, separate from the crime itself.~~

From Judge Weinfeld's charge in United States v. Bruswitz, affirmed 219 F.2d 59, 62-3 (2nd Cir. 1955), cert. denied 349 U.S. 913.

REQUEST No. 32

Denied—Except As Adequately Covered in Other Language in the Charge

These are the essential elements of the conspiracy charge:

(1) That a conspiracy existed with which the defendants knowingly associated themselves.

Here the government charges a conspiracy existed to attempt to evade income taxes;

(2) That at least one of the overt acts charged in the indictment was committed.

Here, again, before a conviction may be had, the government must establish the essential elements beyond a reasonable doubt; otherwise, you must acquit.

A conspiracy is a combination or an agreement of two or more persons by concerted action to accomplish a criminal or unlawful objective or to accomplish some purpose not in itself unlawful by criminal or unlawful means.

It is a partnership in criminal purposes.

The gist of the crime is the unlawful combination or agreement to violate the law.

However, it is not necessary that two persons should meet together and enter into a formal or explicit agreement, either orally or in writing, stating the formation of the conspiracy or the details of the plans or the means by which the unlawful scheme is to be carried out. Indeed, it would be extraordinary if there were such a formal and written agreement. When men, in fact, enter into a plan of that character, much is left to unexpressed understanding.

In determining whether or not there was an unlawful agreement, you may judge the acts and conduct of the

alleged conspirators which were done to carry out an apparent criminal purpose. The adage "Actions Speak Louder Than Words" is applicable here.

It is sufficient if, from the proof of the circumstances and acts, you find beyond a reasonable doubt that the minds of the parties met in an understanding way so as to bring about a deliberate agreement to do the act or acts charged.

From Judge Weinfeld's charge in *United States* v. *Bruswitz*, *affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

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Amended

REQUEST No. 33

Before you can find any defendant guilty of the crime charged in this indictment, you must first determine from all the evidence in the case properly segregated as I have heretofore instructed you whether a conspiracy existed as charged, that that defendant was a member thereof, and finally, that at least one overt act was committed in furtherance of the objects of the conspiracy.

From Judge Weinfeld's charge in *United States* v. *Bruswitz*, *affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

MC:GR

REQUEST NO. 33

You must first determine from all the evidence in the case whether or not a conspiracy existed, that the defendants were members thereof, and, finally, that at least one of the overt acts was committed.

From Judge Weinfeld's charge in United States v. Bruswitz, affirmed 219 F.2d 59, 62-3 (2nd Cir. 1955), cert. denied 349 U.S. 913.

Government's Requests to Charge

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REQUEST NO. 34

In deliberating on the guilt or innocence of each defendant you are to consider all the evidence in the case admitted against that defendant. In determining whether or not a conspiracy existed in a case like this one, you are not to judge the character and effect of the alleged conspiracy by dismembering it and viewing it in separate parts, but only by looking at it as a whole. In other words, you are to consider all the facts, all the circumstances, all the testimony, and all the exhibits in the case, except of course, where evidence has been excluded as to a defendant, you must not consider that evidence against him in deliberating on his guilt or innocence and you are not to consider for any purpose any of the testimony or any of the exhibits that have been stricken; you are to consider only that testimony and those exhibits which remain in the case after the granting of the motions to strike.

From Judge Weinfeld's charge in *United States* v. *Bruswitz, affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

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REQUEST NO. 34

You are to consider all the evidence in the case.

In determining whether or not a conspiracy existed, in a case like this one, you are not to judge the character and effect of the alleged conspiracy by dismembering it and viewing it in separate parts, but only by looking at it as a whole. In other words, you are to consider all the facts, all the circumstances, all the testimony, and all the exhibits in the case.

From Judge Weinfeld's charge in United States v. Bruswitz, affirmed 219 F.2d 59, 62-3 (2nd Cir. 1955), cert. denied 349 U.S. 913.

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REQUEST No. 35

Now, the overt act need be neither a criminal act nor the very crime that is alleged to be the object of the conspiracy. It must, however, accompany or follow the agreement and must be done in furtherance of the object of it.

From Judge Weinfeld's charge in *United States* v. *Bruswitz, affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

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REQUEST No. 36

*The question of whether or not the defendants accomplished what they conspired to do is immaterial to the question of their guilt or innocence. The offense of a conspiracy is completed if you find the defendants were parties to an illegal agreement, as set forth in the indictment, and the commission of one or more of the overt acts in furtherance thereof.

From Judge Weinfeld's charge in *United States* v. *Bruswitz, affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

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REQUEST No. 37

You must first determine from all the evidence in the case whether or not a conspiracy existed. If you decide that a conspiracy did exist, you must next determine, as to each defendant, whether or not he was a member of the conspiracy. In considering whether or not a particular defendant

*As originally submitted this sentence was preceded by the words "In connection with the conspiracy."

was a member of the conspiracy, you must do so without regard to and independently of the statements and declarations of others. In other words, you must determine the membership in the conspiracy of a particular defendant from the evidence concerning his own actions, his own conduct, his own declarations, or his own statements, and his own connection with the actions and conduct of the others.

From the charge in *United States* v. *Foster*, 9 F. R. D. 367, *affirmed sub nom. United States* v. *Dennis*, 183 F. 2d 201 (2nd Cir. 1950), *affirmed* 341 U. S. 494.

REQUEST No. 38 **Granted**

The guilt of a conspirator is not governed by the extent of his participation. Even if one engaged in the conspiracy to a degree more limited than that of his co-conspirator, he is equally culpable as long as he was, in fact, a conspirator.

From Judge Weinfeld's charge in *United States* v. *Bruswitz*, *affirmed* 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

You will recall the language of the conspiracy statute forbids a conspiracy to defraud the United States in any manner or for any purpose. It has been legally decided by the Supreme Court of the United States that this phrase, "defraud the United States in any manner or for any purpose" is not limited merely to conspiracies to deprive the United States of money or property or for things of pecuniary value but also means to interfere with or obstruct any of the lawful governmental functions of the federal government by deceit, corruption, or trickery, or by means that are dishonest.

From the charge in United States v. Manton, (Tr.p.869) affirmed 107 F.2d 834 (2nd Cir. 1939), cert. denied 309 U.S. 664.

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REQUEST NO. S-1

Granted
As Amended

The fifth count of the indictment charges that the defendants therein named, ~~i.e., the American resident defendant, Hyman Harvey Klein, the three Canadians and two other defendants, and certain co-conspirators, but not defendants,~~ did violate 18 U.S.C. § 371 by conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue, to wit, income taxes.

From the opinion of the Court denying the motion for directed verdict, p. 13.

Government's Supplemental Requests to Charge (1)

REQUEST NO. S-1

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REQUEST No. S-2

In other words, the fifth count charges a conspiracy to conceal from the Government, by various means and machinations, information relating to the nature of the defendants' business activities and the nature and source of their income to which it was entitled and to prevent the Government from determining by the ordinary processes of investigation and audit how much, if any, tax was owed by the defendants Klein, Alprin, Haas and the three Canadian defendants who are not before the Court.

Based on statements of the Court (R. P. 6287)

REQUEST No. S-2

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REQUEST NO. 8-2

In other words, the fifth count charges a conspiracy to conceal from the Government, by various means and machinations, certain information to which it was entitled and to prevent the Government from determining by the ordinary processes of investigation and audit how much tax was owed by the defendants Klein, Alprin, Haas and the three Canadian defendants who are not before the Court.

Based on statements of the Court (R.P. 6287)

REQUEST No. S-3

Even if you find that the defendants were unsuccessful in the alleged attempt to throw sand in the Government's eyes, and even if you find that the Government knew from other sources the nature of this income in 1950 to 1952, you may nonetheless find the defendants guilty of the crime of conspiracy as charged in the indictment.

Based on opinion of the Court denying the motion for directed verdict, pp. 14-15.

GOVERNMENT'S REQUEST No. S-4

The conspiracy charged in the fifth count is a conspiracy entirely different and distinct from the conspiracy charged in the fourth count which is no longer before you.

Count five charges a conspiracy to in some manner impede or obstruct the Government in the function of one of its agencies, i.e., the Treasury Department, in the collection of income taxes.

Evidence before you of anything that happened after June 1, 1946 may be considered by you in determining whether there was a conspiracy to throw sand in the Government's eyes, and evidence before you of anything that happened before June 1, 1946 may be considered by you in determining the background or atmosphere in which the alleged conspiracy originated.

Based on statements of the Court (R. P. 6065-7)

REQUEST No. S-5

Where an offense occurs at the termination of a continuous transaction, you may consider the entire train of connected facts leading up to and forming part of the prepa-

ration for the commission of the offense, whether consisting of conduct, declarations, or other occurrences.

Based on *Sprinkle* v. *United States*, 141 F. 2d 811, 817 (4th Cir. 1905).

REQUEST No. S-6

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Furthermore, if you find that the conspiracy charged actually began before the earliest date alleged in the indictment, then you may consider any conspirator's acts and declarations which occurred before that date, in determining the guilt or innocence of these defendants.

Scerba v. *United States*, 61 F. 2d 1009 (2d Cir. 1932)
Heike v. *United States*, 227 U. S. 131, 144-5 (1913).

REQUEST No. S-7

Granted

The Government need not prove that the conspiracy existed over the whole course of time which is alleged in the indictment. Here it says the conspiracy began in 1946, and continued down to the date of the filing of the indictment. But if you find that within that period all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt then that crime becomes complete, and the fact that the Government did not show it as being carried on as long as the indictment says in itself is not of any importance so far as the elements of the crime are concerned.

From the charge in:

United States v. *Lustig*, affirmed 163 F. 2d 85 (2nd Cir. 1947).

REQUEST No. S-8

In determining the intent of the defendants or any of them, you may consider any evidence before you which aids you in determining whether these defendants intended an attempt to obstruct, impair, impede, blind, throw sand or dust in the Government's eyes, or prevent the Government from ascertaining the source from which income tax should be reckoned.

Based on statements of the Court (R. P. 6237-8)

REQUEST No. S-9

I charge you that in this case there is sufficient evidence upon which, if you believe it, you may find the defendants guilty of the crime charged in the indictment.

Charge in:

Carroll v. *United States*, affirmed at 16 F. 2d 951 (2nd Cir. 1927);

Charge of Judge Simon H. Rifkind in:

United States v. *Goldstein*, affirmed at 168 F. 2d 666 (2d Cir. 1948).

REQUEST No. S-10

In determining the issue of intent, you may take into account and consider such evidence of secrecy, deviousness, intrigue and concealment as you may find accompanied the various transactions. Was the concealment, as the Government contends, for the purpose of defrauding the Government?

Government's Supplemental Requests to Charge (1)

From Judge Weinfeld's charge in:

United States v. *Bruswitz*, affirmed 219 F. 2d 59, 62-3 (2nd Cir. 1955), *cert. denied* 349 U. S. 913.

See also the charge of Judge Chesnut, affirmed in *United States* v. *Manton*, 107 F 2d 834 (2nd Cir. 1938), *cert. denied* 309 U. S. 664.

REQUEST No. S-11

Granted

The question of intent is a matter for you, as jurors, to determine and, as intent is a state of mind and it is not possible to look into a man's mind to see what went on, the only way you have of arriving at the intent of a defendant is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances what the intent of the defendant was at the time in question. Thus, direct proof of wilful or wrongful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such inferences may arise from a combination of acts, although each act standing by itself may seem unimportant. These are questions of fact to be determined from all the circumstances.

United States v. *Paschen*, 70 F. 2d 491, 498 (7th Cir. 1934).

REQUEST No. S-12

Denied—Except As Adequately Covered in Other Language in the Charge

If you find that a person knows of a conspiracy, and his concealments of it and other affirmative acts aid the purpose of the conspiracy, then you may find that he was a co-conspirator.

Based on:

Marino v. *United States*, 91 F. 2d 691, 699 (9th Cir. 1937).

Granted

REQUEST No. S-13

The Government exists primarily for the protection of the people in their individual rights. To attain that end, it must establish instrumentalities for protecting the people, not only in their individual and property rights, but in the enjoyment of the right and privilege of proper service in all departments of the Government. Therefore the Government may safeguard itself against conspiracies intended to impair any of the functions of the Government. It may declare it unlawful to combine for the purpose of doing any act which obstructs or interferes with the operations of Government or any of its departments. The Government may safeguard itself against being defrauded out of the right to administer an intelligent and honest service in the interests of the people.

Curley v. *United States*, 130 Fed. 1, 8-9 (1st Cir. 1904).

Denied—Except As Adequately Covered in Other Language in the Charge

REQUEST No. S-14

Any statements made by counsel, unless supported by evidence, are not to be considered by you in your deliberations in this case.

United States v. *Moran*, 194 F. 2d 623 (2nd Cir. 1952), cert. denied 343 U. S. 965.

Denied—Except As Adequately Covered in Other Language in the Charge

REQUEST No. S-15

Now, ladies and gentlemen, if you find that the evidence respecting the defendants, or a defendant, is as consistent with innocence as with guilt, such defendant or defendants should be acquitted. If you find that the law has not been violated, you should not hesitate for any reason to find a

verdict of acquittal. But, on the other hand, if you find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty, as a clear warning that a crime of this character may not be committed with impunity. The public is entitled to be assured of this.

From the charge in:

United States v. *Witt*, 215 F. 2d 580, 584 (2d Cir. 1954), cert. denied *sub nom Talanker* v. *United States*, 348 U. S. 887.

This charge was also approved in:

United States v. *Hiss*, 185 F. 2d 822, 833 (2d Cir. 1950), cert. denied 340 U. S. 948.

Respectfully submitted,

J. EDWARD LUMBARD,
United States Attorney for the
Southern District of New York,
Attorney for United States of America.

ARNOLD BAUMAN
ARTHUR BROOKS
MARTIN CARMICHAEL, JR.
Assistant U. S. Attorneys

JAMES Q. RIORDAN,
Special Assistant to Attorney General.

Of Counsel.

Government's Supplemental Requests to Charge (II)

In the course of Objections and Replies to defendant Klein, the Government requested certain instructions. Those are here incorporated as formal requests, to afford the Court a reference for ruling on them:

Govt. Supp. Request No.	Embodied in	Govt. Objections to Klein's Request No.
S-16	Denied—Except As Adequately Covered in Other Language in the Charge	3
S-17		5
S-18		7
S-19		9
S-20		12
S-21	Granted	27

Govt. Supp. Request No.	Embodied in	Govt. Reply to Klein's Objections Concerning No.
S-22	Denied—Except As Adequately Covered in Other Language in the Charge	S-12

ited
Amended

Request No. S-23

"The greater a person's interest is in the case, the stronger is the temptation to false testimony, and the interest of the defendants who took the stand is of a character possessed by no other witness. Manifestly they have a vital interest in the outcome of this case. This interest is one of the matters which you may consider along with all the other attendant circumstances in determining the credence you will give to their testimony. [But,]* you may find that a defendant is telling the exact truth despite his obvious interest in the outcome."

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*As originally submitted this sentence began "Here again."

Government's Supplemental Requests to Charge (II)

From the charge in *United States* v. *Foster*, 9 F. R. D. 367, 388 (D. C. S. D. N. Y. 1949), affirmed *sub nom. United States* v. *Dennis*, 183 F. 2d 201 (2nd Cir. 1950), affirmed 341 U. S. 494.

In *United States* v. *Paccione*, affirmed *per curiam* F. 2d (2nd Cir., July 27, 1955), the trial court charged the jury:

> "You may consider the interest of a witness in the outcome of the trial.
>
> Now, in regard to that the defendant has a real interest in the outcome of the trial, and he is an interested witness. Now that doesn't mean that just because a defendant is an interested witness that you may or that you would be justified in completely disregarding his testimony just by that fact, but the interest of the defendant or any other witness who has an interest in the outcome of the trial is an element which you will take into consideration along with all of the other factors that you take into consideration in deciding whether somebody told the truth or whether they didn't."

In approving this instruction, our Court of Appeals said:

> "The judge charged generally, as well he might, that the jury should take into account the interest, if any, which a witness had in the outcome of the trial in evaluating the testimony of such witness and that the appellant, who testified in his own defense, was an interested witness. Reagan v. United States, 157 U. S. 301. At the close of the charge the appellant requested the court to charge that the

> narcotics agent who testified for the government 'is an interested party in the same sense that the defendant is in a similar degree.' Regardless of any lack of timeliness in making this request, it was such an obvious exaggeration of the interest of the agent that there was no error in refusing to give it."

In *Reagan* v. *United States*, 157 U. S. 301 (1895), the court had charged (id. at 304):

> "You should especially look to the interest which the respective witnesses have in the suit or in its result. Where the witness has a direct personal interest in the result of the suit the temptation is strong to color, pervert, or withhold the facts. The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privilege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit."

The Supreme Court pointed out, *inter alia*, "The fact that he is a defendant does not condemn him as unworthy of belief, but at the same time it creates an interest greater than that of any other witness, and to that extent affects the question of credibility. It is, therefore, a matter properly to be suggested by the court to the jury." *Id.* at p. 305. After stating that the court may not charge the jury that the defendant is to be disbelieved because he is a defendant, the Court said, at p. 310:

"On the other hand, the court may, and sometimes ought, to remind the jury that interest creates a motive for false testimony; that the greater the interest the stronger is the temptation, and that the interest of the defendant in the result of the trial is of a character possessed by no other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony. * * *"

REQUEST No. S-24 — Granted

The United States, in performing its governmental function of assessing and collecting income taxes, is under our law entitled to the economic facts upon which the proper tax is to be computed. It is the duty of everyone in our country to supply those facts as required by law.

REQUEST No. S-25 — Granted As Amended

You will note that the indictment reads, "On or about June 1, 1946". You are not bound or limited by this date, and you may find that a conspiracy began earlier or later than that date. If you find that the conspiracy charged in the indictment began prior to June 1, 1946, then you may consider evidence of occurrences prior to that date and during the term that you find a conspiracy to have existed not merely as background evidence, but as evidence of the scope and nature of the conspiracy and its participants.

REQUEST NO. S-25

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REQUEST NO. S-25

You will note that indictment reads, "On or about June 1, 1946." You are not bound or limited by this date, and you may find that a conspiracy began earlier or later than that date. If you find that the conspiracy charged in the indictment began prior to June 1, 1946, then you may consider the evidence prior to that date but during the term of the conspiracy as proof of the conspiracy, not limited to the functions of background evidence.

See cases cited at Government's Objection to defendant Klein's Request No. 31.

Government's Supplemental Requests to Charge (II)

REQUEST No. S-26

Denied—Except As Adequately Covered in Other Language in the Charge

The Government is not required to prove any overt act alleged in the indictment, so long as it proves some overt act in support of the conspiracy.

Based on *United States* v. *Negro*, 164 F. 2d 168, 172-3 (2nd Cir. 1947).

REQUEST No. S-27

Denied—Except As Adequately Covered in Other Language in the Charge

If you find beyond a reasonable doubt that any defendant conspired with any codefendant here on trial, or with I. J. Klein, McLennan, Norgan, Roer, Koerner, Rokoff, or Silver, or with any other person, as charged in this indictment, then you may find that defendant guilty.

See cases cited in Government's memorandum in support of admissibility of Roer's statement.

REQUEST No. S-28

Granted

One may be a conspirator, and guilty as such, even though he does not know all the details of the conspiracy, or the identity of all the participants.

Based on *Blumenthal* v. *United States*, 332 U. S. 539, 557 (1947).

REQUEST No. S-29

Granted As Amended

[However]* if and when the existence of the conspiracy charged in the indictment and the membership of all or any of the defendants in such conspiracy has been found, then the acts thereafter done and the statements or declarations thereafter made by any person found by you to be a member of the conspiracy may be considered in connection with

*The word "However" was inserted by the court.

the case as to any defendant whom you find to have been a member of the conspiracy, even though such acts and declarations may have been made in the absence and without the knowledge of such defendant, provided such acts were done and such statements or declarations were made during the continuance of such conspiracy and in furtherance of an object or purpose of the conspiracy.

From the charge in *United States* v. *Schneiderman*, 106 F. Supp. 906, 937 (D. C. S. D. Cal. 1952), affirmed *sub nom. Yates* v. *United States*, F. 2d (9th Cir., March 17, 1955), noted 23 LW 2477-8 (March 29, 1955).

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REQUEST No. S-30

I charge you that by signing Klein's 1947 income tax return, Haas assumed responsibility for anything therein which he knew to be false.

See Government's Objection to Haas' Requests Nos. 16 and 18.

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REQUEST No. S-31

However, it is not necessary in order to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the details of the plan or means by which the unlawful scheme was to be made effective.

It is sufficient if two or more persons, in any manner, or through any contrivance, impliedly or tacitly, come to a mutual understanding to accomplish a common and unlawful design, knowing its object. In other words, where an

unlawful end is sought to be effected and two or more persons, actuated by the common purpose of accomplishing that end, knowingly work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although his part therein be a subordinate one, or be executed at a remote distance from the other conspirators. All the conspirators need not have originally conceived the conspiracy, or participated in its conception. Those who come in later, with knowledge of the aims and purposes of the conspiracy, and cooperate in the common effort to attain the unlawful results become parties thereto. A conspiracy is not ended as long as the evidence shows an intention to continue it. Each alleged conspirator who was the agent of the others at some time during the life of the conspiracy remains an agent during all of its existence, except that a conspirator has the right to withdraw from the execution of the conspiracy, but it requires affirmative and effective action thus to withdraw and terminate his liability in the conspiracy. It is a principle of law that a condition once shown to exist continues until a different situation is shown.

From the charge in *United States* v. *Foster*, 9 F. R. D. 367, 377 (D. C. S. D. N. Y. 1949), affirmed *sub nom. United States* v. *Dennis*, 183 F. 2d 201 (2nd Cir. 1950), affirmed 341 U. S. 494, hereinafter referred to as the *Dennis* case.

REQUEST No. S-32

Denied—Except As Adequately Covered in Other Language in the Charge

You are instructed that the question of possible punishment of the defendants or any of them, in the event of conviction is no concern of the jury, and should not in any sense enter into or influence your deliberation. The duty

of imposing sentence rests exclusively upon the court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendants solely upon the basis of such evidence. Under your oaths as jurors, you cannot allow a consideration of the punishment which may be inflicted upon the defendants, if they are convicted, to influence your verdict in any way.

From the charge in the *Dennis* case, 9 F. R. D. at p. 394.

REQUEST No. S-33

It is not incumbent upon the prosecution to prove that all of the means set out in the indictment were, in fact, agreed upon to carry out the conspiracy, or that all of them were actually used or put into operation. It is sufficient if it be established to your satisfaction, and beyond a reasonable doubt, that one or more of the means described in the indictment was agreed upon to be used to effect the conspiracy.

From the charge in the *Dennis* case, 9 F. R. D. at p. 378.

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REQUEST No. S-34A THROUGH O

In determining whether the defendants or any of them intended to impede the Bureau of Internal Revenue in ascertaining the true facts relating to the nature of their business activities and the source and nature of their income, you should consider such matters as the following:

REQUEST No. S-34A

Whether the three tax opinions which Klein obtained, and the fourth, furnished by J. Stanley Halperin, and read

by Klein, show an awareness on Klein's part of the tax difficulties inherent in the Harwood venture.

REQUEST No. S-34B

The testimony that neither Burke nor Haas was furnished a copy of the Supplemental Agencias-Williams agreement of April 20, 1944 for consideration in preparing their separate opinions; the further testimony that they did not even know of its existence.

REQUEST No. S-34C

The testimony that during the whole period of the Harwood venture, Klein did not disclose to his personal tax attorney, Mr. Burke, the fact that he was financially interested in any of the Cuban or Panamanian companies.

REQUEST No. S-34D

The testimony of Jules Jacobs, which Klein denies, that Klein said the Agencias-Williams contract would "look better" if divided into two parts.

REQUEST No. S-34E

Roer's statement that on giving Roer his draft, Klein said to hold it since he was having a little trouble on his income tax, but as soon as this was straightened out, he would want Roer to deposit the draft.

REQUEST NO. S-34F

Alprin's statement that in 1948 Klein told him that because of Klein's income tax difficulties he wanted Alprin to hold on to the Alprin and Koerner drafts until he gave instructions for their release.

REQUEST NO. S-34G

Whether it was necessary for Klein in March 1947 to send the memorandum books of the foreign companies to Montreal in view of the testimony that the original books were already there at that time and in the possession of the three Canadians.

REQUEST NO. S-34H

Testimony of Rokoff that he rewrote the books of Tivoli and may have rewritten the Regan Potter book, and that he destroyed the originals of the books which he rewrote; coupled with the testimony of Klein that the Tivoli book was recopied.

REQUEST NO. S-34I

Klein's testimony that some two months after he had acquired 100% ownership of Tivoli, he sent the original books of account of Tivoli to Canada.

REQUEST NO. S-34J

The entries in the Tivoli book indicating receipts of substantial commission income as compared with Klein's testimony on the stand that Tivoli never did any business.

REQUEST No. S-34K

Klein testified that all memorandum books and records of the foreign companies were turned over to the three Canadians in Montreal on March 27, 1947. Yet Renee Bennett testified that on or after April 3, 1947, at Haas' instruction, she made an entry in the memorandum books of Regan Potter. During this period she was employed by Haas, and Klein used Haas' office at least once a week. Haas testified that she was mistaken as to who instructed her to make the entry; however, he identified the entry as Miss Bennett's handwriting.

REQUEST No. S-34L

In his sworn answers given in 1951 to interrogatories from the Bureau of Internal Revenue, Klein stated that he was not in a position to give the Bureau certain information concerning the Tivoli drafts and checks and the ownership of the corporations to which they were made payable.

On the stand, Klein stated that at the time he did not recall or did not answer the questions. On the other hand, Haas testified that he was with Klein when the answers were prepared, and that Klein said he was not going to give the information sought in the interrogatories.

REQUEST No. S-34M

Regardless of the respects in which the testimony of Klein and Rokoff differs from that of Roer, Alprin, Koerner and Haas as to the nature of the drafts issued by Tivoli, it is undisputed that the three drafts were made payable to

two Cuban companies which had no interest in Tivoli, were owed no money by Tivoli, and in fact did no business at all.

REQUEST No. S-34N

Haas and Klein have testified that Klein, in January, 1947, told Haas that the $2,164,096.62 entry of "Commissions Paid" in the Regan Potter trial balances prepared by Rokoff was in error because $1,500,000 of this amount should have been shown as a loan by Regan Potter to Tivoli. Haas thereupon made this correction in his consolidated balance sheets on or about January 16, 1947.

Yet the Regan Potter books—in particular, the entry of April 3, 1947—shows that the $1,500,000 amount was charged off on that date by Regan Potter as "Commissions Paid".

REQUEST No. S-34O

Klein testified that at least as late as November 26, 1945, he was still considering the possibility of allowing seven others to subscribe to the 2850 shares of Tivoli stock.

Yet the Tivoli book entry shows Klein subscribed to these 2850 shares of Tivoli stock on November 20, 1945.

REQUEST No. S-35

In determining the intent of the defendants, you may consider the conflict between the statements of Klein and Rokoff on the one hand, and Alprin, Haas, Koerner and Roer on the other, together with the failure to use these

substantial funds aggregating over three quarters of a million dollars, with the attendant loss of interest thereon while they were held undeposited. In this connection, you may also consider that entries in the Tivoli books indicate that these three drafts were business expenditures—i.e. commissions and expenses—for the year 1947.

REQUEST No. S-36

Denied—Except As Adequately Covered in Other Language in the Charge

In determining whether Klein participated in the procedure whereby Alprin, Koerner, Haas and Roer received these funds in the names of their foreign corporations and held them, you may consider the testimony of Doctor Valverde that he took part in the formalities of forming the twelve Cuban corporations for Alprin, Koerner and Roer upon the recommendations, under the guidance and with the active participation of the law firm theretofore representing the interests of the defendant Hyman Harvey Klein and his three Canadian associates. Op. pp. 16-17. For the evidence is that Dr. Moran's firm actually prepared all the formal papers necessary to the organization of these corporations, whereas Dr. Valverde only undertook the execution of these documents as Secretary of the corporations and the filing thereof in accordance with Cuban law.

REQUEST No. S-37

Denied—Except As Adequately Covered in Other Language in the Charge

There is evidence in the record that these drafts were procured at a time when the defendant Klein was in income tax difficulties. Op. p. 17.

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REQUEST No. S-38

You may also consider the evidence that the three drafts, each in excess of a quarter of a million dollars, were drawn out of Tivoli's funds at Klein's direction (Op. p. 13). The same is true of the $35,000 check to the corporation Commercial LaRibera, turned over to the defendant Haas at Klein's instruction.

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REQUEST No. S-39

You may also consider Haas' testimony in his statements to the Bureau of Internal Revenue and here on the witness stand, that Klein told Haas he would instruct Roer to turn one of his corporations over to Haas (Op. p. 18; Testimony of defendant Haas, R. p. 8140), and this was done (Testimony of defendant Haas, R. p. 8144, 8146).

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REQUEST No. S-40

Haas is not on trial for being an accountant or a lawyer. He is charged as a conspirator. In determining his state of mind, his intent, you may consider, in addition to his preparation of Klein's 1947 income tax return, the testimony of Miss Bennett, which Haas disputes, that he had had a closer contact than he had acknowledged with the books of at least one of the companies involved. Op. p. 18.

You may also consider his acquisition of Roer's corporation, LaRibera, and the loan to LaRibera from Klein of $35,000, together with Klein's refusal to accept return of this money after the funds were unfrozen in Canada. Op. p. 18.

REQUEST No. S-41 **Denied**

In determining whether defendant Alprin was a party to the conspiracy charged, you may consider the fact that the Tivoli drafts were fully negotiable. That is, their encashment did not legally require Klein's approval, but could have been accomplished the moment the drafts were received. You may also consider the evidence that in 1947 Alprin, a lawyer, deposited his draft in the account of Economica Agencias, withdrew portions thereof and deposited them in the accounts of two other Cuban companies owned by him; in 1949, when these three accounts were unfrozen, Alprin then placed all the proceeds back into the account of Economica and purchased another draft to the order of Economica in the same face amount as the original draft, which second draft he held until 1952.

Defendant Klein's Requests to Charge

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Amended

REQUEST No. 1

[But,]* if, upon a fair and impartial consideration of al the evidence in this case, you should find that there are tw reasonable inferences which may be drawn from the evi dence, one of which is consistent with the guilt of a defend ant, and the other of which is consistent with his innocence then you must find that defendant not guilty.

Romano v. *United States*, 9 F. 2d 522 (2 Cir 1925)

*The word "But" was added by the court.

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Defendant Klein's Requests to Charge
Request No. 1

REQUEST NO. 1

Granted
As Amended

But, if, upon a fair and impartial consideration of all the evidence in this case, you should find that there are two reasonable inferences which may be drawn from the evidence, one of which is consistent with the guilt of a defendant, and the other of which is consistent with his innocence, then you must find that defendant not guilty.

Romano v. United States
9 F.2d 522 (2 Cir. 1925)

REQUEST NO. 2

Granted
As Amended

From time to time counsel for each party has interposed objections to evidence. Counsel not only has the right, but he has the duty to his client to make any and all objections which ~~are~~ he deem~~ed~~s advisable or appropriate, and no inference or presumption can or should be indulged in, one way or the other, by reason of the interposition of such objection.

REQUEST NO. 3

**In this connection you are instructed that there is a very real and vital difference between simply doing an act and doing that act "wilfully". In the first case, no bad intent or purpose is involved, while in the second case of "wilfully" doing the act, the elements of guilty knowledge and bad purpose are involved and constitute the gist of the offense. You are also instructed that the use of the word "wilfully" in an indictment implies that an act was not merely "voluntarily" done, but that it was done with an evil intent and bad purpose to do wrong. Unless you find such evil intent beyond a reasonable doubt you must find the defendants not guilty.

U. S. v. *Murdock*, 290 U. S. 389, 394 (1933)
Spies v. *U. S.*, 317 U. S. 492, 496 (1943)

REQUEST NO. 4

At times throughout the trial, testimony, oral and documentary, was admitted as to a particular defendant or defendants and excluded as to a certain defendant or defendants. You must not consider such excluded evidence as against the defendant or defendants as to which the evidence was so excluded in determining whether a conspiracy did or did not exist. You must consider as against each defendant only such testimony as was admitted as to him and him alone.

**The court omitted one sentence reading: "The fifth count charges that the defendants 'wilfully' did the acts and things alleged in that indictment."

Defendant Klein's Requests to Charge

REQUEST No. 5

Granted As Amended

Except where disclosure is required by proper legal authority, every person and every corporation is entitled to maintain the privacy of his or its business, books, papers and documents and to prevent others from inspecting them. No inference of wrongdoing may be drawn by you as against any defendant [merely]* for having availed himself of that right.

REQUEST No. 6

Granted

Many of the witnesses in this case have testified that they did not recall certain facts by reason of the lapse of many years. Some of the witnesses stated that records were destroyed because of the lapse of many years. Some persons who might have been witnesses have died. You are not entitled to guess or surmise what such testimony or documentary proof would have shown if it were available at this time.

REQUEST No. 7

Granted

You should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the guilt or innocence of the accused for the mere purpose of returning a verdict or solely because the opinion of the other jurors differs from yours.

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*The word "merely" was added by the court.

Defendant Klein's Requests to Charge

REQUEST No. 8

By the finding of an indictment, no presumption whatsoever arises that a defendant is guilty, or that he has had any connection with, or responsibility for, any act charged against him. A defendant is presumed to be innocent at all stages of the proceeding, and unless the evidence introduced on behalf of the Government shows him to be guilty of each and every element of the offense charged beyond a reasonable doubt, you must find the defendant not guilty.

Holland v. *United States*, 348 U. S. 121 (1954)

REQUEST No. 9

On November 20, 1952 defendant Haas answered a series of questions put to him by a number of agents of the Bureau of Internal Revenue. Neither defendant Klein nor any attorney representing him was present on that occasion. The questions and answers which were read into evidence were admitted only as to defendants Haas and Alprin. They must not at any stage of your deliberations be considered as against defendant Klein. To illustrate: Where defendant Haas in such statement testified that defendant Klein said or did something or stated that Alprin told Haas that Klein had said or done something, this is not to be taken as any proof that Klein said or did what Haas claimed he said or did, and is not any proof that Klein said or did what Alprin purportedly told Haas Klein said or did.

The instruction I have just given you with reference to the Haas statement is equally applicable to the Alprin statement. Neither of said statements is to be considered

by you in any stage of your deliberations as to defendant Klein and any mention of any purported statement or act of Klein is not to be taken as any proof whatever that Klein made the statement or did the act described.

As Requested

For example, on November 20, 1952 defendant Haas answered a series of questions put to him by a number of agents of the Bureau of Internal Revenue. Neither defendant Klein nor any attorney representing him was present on that occasion. The questions and answers which were read into evidence were admitted only as to defendants Haas and Alprin. They must not at any stage of your deliberations on whether a conspiracy existed and whether Klein was a party to such conspiracy be considered as against defendant Klein. To illustrate: Where defendant Haas in such statement testified that defendant Klein said or did something or where defendant Haas stated that Alprin told Haas that Klein had said or done something, this is not to be taken as any proof that Klein said or did what Haas claimed he said or did, and is not any proof that Klein said or did what Alprin purportedly told Haas Klein said or did.

The instruction I have just given you with reference to the Haas statement is equally applicable to the Alprin and Klein statements. Neither of said statements is to be considered by you in determining whether a conspiracy existed or whether he was a party to it as to any defendant other than the one who made the statement. Any mention therein of any purported statement or act of a defendant other than the one who made the statement to the agents is not to be taken as any proof whatever that such other defendant made the statement or did the act described, in your deliberations to determine whether there was a conspiracy.

REQUEST No. 10

Since defendant Koerner was not made a defendant under the fifth count of the indictment, his income tax return for the year 1952 was not and could not be admitted as to him. This income tax return, which is Gov. Ex. 253, was admitted as to defendant Klein. Such admission was required under the circumstance caused by the fact that Koerner is not a defendant under this count. Merely because it was so admitted as to defendant Klein does not mean that Klein had anything to do with its preparation or filing, or that he had any knowledge of its contents or any part thereof, or that, if you find it was a false return in any respect, that Klein has any responsibility for its falsity.

REQUEST NO. 10

Since defendant Koerner was not made a defendant under the fifth count of the indictment, his income tax return for the year 1952 was not and could not be admitted as to him. This income tax return, which is Gov. Ex. 253, was admitted as to defendant Klein. Such admission was required under the circumstance caused by the fact that Koerner is not a defendant under this count. Merely because it was so admitted as to defendant Klein does not mean that Klein had anything to do with its preparation or filing, or that he had any knowledge of its contents or any part thereof, or that, if you find it was a false return in any respect, that Klein has any responsibility for its falsity.

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REQUEST NO. 11 GRANTED

Many times throughout this trial the Court has been called upon to determine whether or not certain offered evidence should be admitted as to one, any or all defendants. You are not to concern yourselves with, or speculate with regard to, the reasons for such rulings; and you are not to draw any inferences whatever from them. Whether or not offered evidence is admissible is purely a question of law for the Court to determine. In admitting evidence to which an objection has been made, the Court does not determine what, if any, weight should be given such evidence, nor does the Court pass upon the credibility of any witness. You are the sole judges as to what weight shall be given the evidence, and as to the credibility of the witnesses.

Defendant Klein's Requests to Charge

REQUEST NO. 11

Many times throughout this trial the Court has been called upon to determine whether or not certain offered evidence should be admitted as to one, any or all defendants. You are not to concern yourselves with, or speculate with regard to, the reasons for such rulings; and you are not to draw any inferences whatever from them. Whether or not offered evidence is admissible is purely a question of law for the Court to determine. In admitting evidence to which an objection has been made, the Court does not determine what, if any, weight should be given such evidence, nor does the Court pass upon the credibility of any witness. You are the sole judges as to what weight shall be given the evidence, and as to the credibility of the witnesses.

REQUEST NO. 12

You may not consider any offer of evidence that was rejected by the Court. As to any question to which an objection was sustained, you may not conjecture as to what the answer would have been had an answer been given, nor are you to draw any adverse inference from the fact that an objection was made.

In this connection, you may not consider any evidence which the Court has stricken from the record, despite the fact that you may have actually heard the evidence in the courtroom.

Granted
As Amended

REQUEST NO. 13

On March 27, 1947 two drafts bearing that date, of Royal Bank of Canada, Montreal Branch, were drawn to the order of La Economica Agencias, S.A., the stock of which was wholly owned by defendant Alprin. Each draft was for $264,162.70, and that amount was debited to the account of Tivoli Trading Co. with the Royal Bank of Canada, Montreal Branch. On the same date a third draft, bearing that date, of the Royal Bank of Canada, Montreal Branch, in the sum of $274,423.62 was drawn in favor of Compania Exportadora Fernandina, S.A., the stock of which was wholly owned by Roer, and debited to the account of Tivoli Trading Co. with the Royal Bank of Canada, Montreal Branch. These three drafts will be hereafter referred to for convenience as the Alprin, Koerner and Roer drafts.

~~If you find that these drafts did in fact represent a bonus or commissions or compensation to Alprin, Koerner and Roer, respectively, then you may not find that their entry in the books of Tivoli Trading Corporation as "Commissions and Expenses" was an act in furtherance of the alleged conspiracy.~~

REQUEST NO. 14

Granted
As Amended

If you find that the Alprin, Koerner and Roer drafts did in fact represent the (unconditional) payment to them of a bonus, commissions, or compensation, then you may not find that Klein's testimony ~~with respect thereto~~ (to that effect) before Special Agents Victory and McCarthy was an act in furtherance of the alleged conspiracy.

Denied

REQUEST NO. 15

There is no evidence before you that the defendant Klein was, to his knowledge, in income tax difficulties at the time the Alprin, Koerner and Roer drafts were obtained by Tivoli and delivered to Alprin, Koerner and Roer or their nominees on about March 27, 1947. There is therefore no evidence from which you would be warranted in concluding that these drafts represented anything either than (1) the liquidation of an interest in Tivoli, on the one hand, or (2) the payment of a commission, bonus, or compensation, on the other.

Defendant Klein's Requests to Charge

REQUEST No. 15 — Denied

There is no evidence before you that the defendant Klein was, to his knowledge, in income tax difficulties at the time the Alprin, Koerner and Roer drafts were obtained by Tivoli and delivered to Alprin, Koerner and Roer or their nominees on about March 27, 1947. There is therefore no evidence from which you would be warranted in concluding that these drafts represented anything other than (1) the liquidation of an interest in Tivoli, on the one hand, or (2) the payment of a commission, bonus, or compensation, on the other.

REQUEST No. 16 — Denied

You may not speculate, guess or surmise as to what the Alprin, Koerner and Roer drafts represented. On the evidence before you, you are required to determine whether the drafts represented the liquidation of interests in Tivoli on the one hand, or a bonus, commissions, or compensation, on the other.

REQUEST No. 17 — Granted

In determining which of the two alternative types of payments the drafts represented, you may consider the fact that there are in evidence documents purporting to be receipts by Alprin, Koerner and Roer of refunds to them of the moneys they originally invested in Tivoli, which documents admittedly bear their signatures.

Defendant Klein's Requests to Charge

REQUEST No. 18

The prosecution has conceded, and you therefore must accept it as the fact, that no part of the proceeds of the Alprin, Koerner and Roer drafts were received by defendant Klein or inured in any way to his benefit; and you may take that conceded fact into consideration in determining whether or not the defendant Klein had any motive inducing him to formulate or to join the alleged conspiracy.

REQUEST No. 19

It is the theory by the prosecution of the fifth count that the Alprin, Koerner and Roer drafts represented compensation to them which was ordinary income; that when Alprin, Koerner and Roer reported this ordinary income as a capital gain in their respective income tax returns filed in 1950 and 1952, those returns were false; and that these false returns were filed pursuant to a conspiracy to obstruct the Bureau of Internal Revenue in the collection of income taxes. This is the only conspiracy with which the defendants are charged; and despite everything that you have heard and seen by way of evidence in this case, that is the only conspiracy which you are called upon to consider and which you may consider.

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REQUEST No. 20

There is no [direct]* evidence before you that the defendant Klein had anything whatever to do with the preparation and filing of the income tax returns filed by Roer and his wife in 1950 or by Alprin and his wife and by Koerner

*In each instance, the word "direct" was added by the court.

and his wife in 1952; nor is there any [direct]* evidence that defendant Klein was consulted or that he advised, suggested or directed in the preparation and filing of any of those returns.

REQUEST No. 21

Granted

If you find that the Alprin, Koerner and Roer drafts were made payable to their corporate nominees rather than to themselves individually at their request, in the absence of any evidence to the contrary the defendant Klein had the right to make the drafts so payable and to assume that the income taxes properly payable upon those drafts would in fact be paid.

REQUEST No. 22

Denied—Exce
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The mere fact that the defendant Klein made the Alprin, Koerner and Roer drafts payable to their corporate nominees rather than to them individually is not sufficient to justify you in finding that this was done for the purpose of furthering the conspiracy alleged in the fifth count.

*In each instance, the word "direct" was added by the court.

REQUEST NO. 23

Granted
As amended

I charge you that nowhere in the fifth count, which is the only count with which we are concerned, is ~~the defendant Klein~~ any defendant charged with the substantive crime of having failed to report or to pay all the income tax properly due from him.

Granted

REQUEST NO. 24

I charge you that it is not claimed by the prosecution that the filing of the defendant Klein's income tax return for the years 1944, 1945, 1946, 1947 or for any other year was any part of the conspiracy charged in the fifth count.

Defendant Klein's Requests to Charge

REQUEST NO. 24 Granted

I charge you that it is not claimed by the prosecution that the filing of the defendant Klein's income tax return for the years 1944, 1945, 1946, 1947 or for any other year was any part of the conspiracy charged in the fifth count.

REQUEST NO. 25 Denied

In view of the fact that I have granted judgment of acquittal upon the first four counts of the indictment, I charge you as a matter of law that the 1944, 1945, 1946 and 1947 income tax returns of the defendant Klein were not false in any of the respects charged by the Government in the first four counts of the indictment; and for all present purposes those returns must be regarded as true and accurate returns in every respect. You may take that fact into consideration in determining whether or not the defendant Klein had any motive inducing him to formulate or join the alleged conspiracy charged in the fifth count.

As Amended

REQUEST NO. 26

The granting of judgment of acquittal on the first four counts of the indictment necessitated my striking from the record a large number of exhibits and a great quantity of testimony. You may not consider any of the exhibits and testimony which has been stricken, in your deliberations regarding the guilt or innocence of the defendants under the fifth count. ~~If you find in the course of your deliberations that it is a mental impossibility to disregard the evidence which has been stricken;~~ or if you find it impossible to keep in mind what evidence has been stricken and what ~~retained as to the fifth count, then you must find the defendants not guilty; for you may not convict them upon~~ evidence not in this record.

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Accepted

REQUEST NO. 27

Before you can find ~~the~~ any defendant ~~Klein~~ guilty of the conspiracy charged in the fifth count, you must find (1) that such a conspiracy did exist in fact; (2) that ~~the~~ that defendant ~~Klein~~ knowingly participated in that conspiracy; and (3) that ~~the~~ that defendant ~~Klein~~ did not withdraw from the conspiracy on or before September 17, 1951.

REQUEST NO. 28

In determining whether or not the defendant Klein is guilty of the conspiracy charged in the fifth count, you may take into consideration the extent to which his testimony before Special Agents Victory and McCarthy differed from the testimony before those same Agents given by Alprin and Haas with respect to the nature of the payments represented by the Alprin, Koerner and Roer drafts.

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REQUEST No. 28

In determining whether or not the defendant Klein is guilty of the conspiracy charged in the fifth count, you may take into consideration the extent to which his testimony before Special Agents Victory and McCarthy differed from the testimony before those same Agents given by Alprin and Haas with respect to the nature of the payments represented by the Alprin, Koerner and Roer drafts.

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Accepted as Amended

REQUEST NO. 29

Such evidence as has not been stricken from the record and which relates to the period prior to June 1, 1946 may only be considered by you as "background material" as I have defined that term. Under no circumstances may that evidence alone be considered by you as establishing ~~even tending to show~~ the existence or formulation of the conspiracy alleged in the fifth count.

Granted
As Amended

REQUEST NO. 30

The evidence as to events that occurred prior to June 1, 1946 ~~are~~ to be received and considered by you only as historical background to establish the relationship of the parties prior to the commencement of the alleged conspiracy on June 1, 1946, and for no other purpose. ~~And such evidence is not to be considered by you in determining whether or not a conspiracy commenced on June 1, 1946.~~

(p.6246)

Defendant Klein's Requests to Charge

REQUEST No. 31

Denied—Except As Adequately Covered in Other Language in the Charge

By evidence of background, atmosphere or climate facts I mean evidence pertaining to the period prior to June 1, 1946—the date when the alleged conspiracy charged in the fifth count is claimed to have begun—showing the relationship of the persons involved as defendants or co-conspirators in the fifth count prior to June 1, 1946 (p. 6205).

REQUEST No. 32

Denied—Except As Adequately Covered in Other Language in the Charge

Even if you should find that a conspiracy did exist between the defendants and the co-conspirators named in the fifth count; and even if you should find that such conspiracy was one to evade the payment of the income taxes of such defendants, or any of them, you must nevertheless find the defendants not guilty under the fifth count. For the fifth count does not charge the defendants with a conspiracy to evade their income taxes.

REQUEST NO. S-1

I charge you that by the judgment of acquittal it has been conclusively determined that the defendants Hyman Harvey Klein, Isidor J. Klein, Albert McLennan, George Norgan, Ellis Rosenberg, Maurice Haas, Irving A. Koerner, Morris O. Alprin and Albert Roer did not (conspire to nor did they) unlawfully attempt to evade and defeat any part of the income taxes due and owing by defendant Hyman Harvey Klein to the United States for the calendar years 1944, 1945 and 1946 by filing and causing to be filed on May 17, 1948 the income tax return of defendant Hyman Harvey Klein for the calendar ~~years~~ 1944, 1945 and 1946 by filing and causing to be ~~filed~~ on May 17, 1948 the income tax return of defendant Hyman Harvey Klein for the calendar year 1947.

Denied - Except As Adequately Covered in Other Language in the Charge

REQUEST NO. S-2

I charge you that by the judgment of acquittal under the first four counts of the indictment it has been conclusively determined that the income tax return of defendant Hyman Harvey Klein for the calendar year 1947 did not contain a false statement as charged in those counts.

Defendant Klein's Supplemental Requests to Charge (1)

REQUEST No. S-2

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that by the judgment of acquittal under the first four counts of the indictment it has been conclusively determined that the income tax return of defendant Hyman Harvey Klein for the calendar year 1947 did not contain a false statement as charged in those counts.

REQUEST No. S-3

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that by the judgment of acquittal under the first four counts it has been conclusively determined that the income tax return of defendant Hyman Harvey Klein for the calendar year 1947 did not falsely represent any net income of defendant Hyman Harvey Klein for the years 1944, 1945 or 1946 as constituting capital gain.

REQUEST No. S-4

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that by the judgment of acquittal under the first four counts it has been conclusively determined that the capital gain reported in the income tax return of defendant Hyman Harvey Klein for the calendar year 1947 was correctly, truthfully and honestly reported in all respects.

REQUEST No. S-5

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that by the judgment of acquittal under the first four counts it has been conclusively determined that the income tax return of defendant Hyman Harvey Klein for the calendar year 1947 was not filed for the purpose of concealing additional unreported net income of said defendant Klein either for the calendar year 1944, or 1945 or 1946.

contain a false statement as charged in those counts.

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REQUEST No. S-6

I charge you that by the judgment of acquittal under the first four counts it has been conclusively determined that defendant Hyman Harvey Klein fully, correctly and honestly has reported all of his taxable income for the years 1944, 1945, 1946 and 1947 and has paid the United States in full all of the taxes due to the United States upon his income.

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REQUEST No. S-7

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that Hyman Harvey Klein, Isidor J. Klein, Albert McLennan, George Norgan, Ellis Rosenberg, Maurice Haas, Irving A. Koerner, Morris O. Alprin, Albert Roer, William Rokoff and Harry Silver did not, either among themselves or with other persons unlawfully conspire that they would attempt to evade and defeat income taxes due and owing to the United States.

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REQUEST No. S-8

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that the formation in Cuba of Agencias Destiladores, S. A., was not for the purpose of concealing the source and nature of the income arising from the sale of Harwood's Blended Canadian Whiskey.

Defendant Klein's Supplemental Requests to Charge (1)

REQUEST No. S-9

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that the persons named in that count either as defendants or co-conspirators did not conspire to attempt to evade and defeat any of the income taxes due the United States in the calendar years 1944, 1945 or 1946 by Hyman Harvey Klein, or by Isidor J. Klein, or by Albert McLennan, or by George Norgan.

REQUEST No. S-10

Denied

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that those named as defendants or co-conspirators in that count did not conspire that the defendants would conceal and continue to conceal attempts to evade and defeat income taxes due and owing to the United States for the calendar years 1944, 1945 or 1946 by Hyman Harvey Klein or by Isidor J. Klein or by Albert McLennan or by George Norgan.

REQUEST No. S-11

Denied

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that the opinion letter of the defendant Maurice Haas dated February 27, 1945 was not written as part of any conspiracy to evade and defeat income taxes due and owing to the United States for the calendar years 1944, 1945 and 1946 by defendant Hyman Harvey Klein, or by Isidor J. Klein or by Albert McLennan or by George Norgan.

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REQUEST No. S-12

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that the filing on May 17, 1948 of the income tax return of Hyman Harvey Klein for the calendar year 1947 was not done pursuant to any conspiracy to defeat and evade any part of the income taxes due the United States for the calendar years 1944, 1945 and 1946 by Hyman Harvey Klein or by Isidor J. Klein or by Albert McLennan or by George Norgan.

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REQUEST No. S-13

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that the alleged conversation between Morris O. Alprin and Hyman Harvey Klein on February 10, 1949 in the Southern District of New York, if said conversation did in fact take place, was not pursuant to any conspiracy to defeat and evade the income taxes due the United States for the calendar years 1944, 1945 or 1946 by Hyman Harvey Klein or by Isidor J. Klein or by Albert McLennan or by George Norgan.

Defendant Klein's Supplemental Requests to Charge (1)

REQUEST No. S-14

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that by the judgment of acquittal under the fourth count it has been conclusively determined that the alleged conversation between Albert Roer and Hyman Harvey Klein on or about September 1, 1951 in the Southern District of New York, if such a conversation ever took place, was not pursuant to any conspiracy to defeat and evade the income taxes due the United States for the calendar years 1944, 1945 or 1946 by Hyman Harvey Klein or by Isidor J. Klein or by Albert McLennan or by George Morgan.

Granted
As Amended

REQUEST NO. S-15

~~You are charged~~ (I charge you) that merely because the OPA was making or had made, an investigation, it does not follow that defendant Klein ~~or any other defendant~~ should have assumed that the United States Government was investigating his ~~or their~~ income tax status.

Court S.M. 6854

Defendant Klein's Supplemental Requests to Charge (11)

REQUEST NO. S-16 — Granted

In order to find any defendant guilty you must be convinced beyond a reasonable doubt that he not only knew of the conspiracy alleged in the indictment, but that he actually participated in it, and that his participation was knowing and wilful; that he knew it was for an illegal purpose and he participated just the same and tried to help in the accomplishment of such an illegal purpose.

REQUEST NO. S-17 — Denied

Inasmuch as Tivoli Trading Corporation was a Panamanian corporation it was not required by law to keep any of its books or records in the United States.

Internal Revenue Code of 1939, §§ 54(a), 231;
Regulations 118, § 39.41-3

Granted
As Amended

REQUEST NO. S-18

The Government has conceded that (the proceeds of) each of the three drafts to La Economica Agencias, S.A. and Compania Exportadora Fernandina, S.A. ~~were~~ (became) the property of Alprin, Koerner and Roer, and that defendant Klein did not (thereby) have or retain any interest therein. You must, ~~now~~ not and indeed you cannot assume, surmise, speculate, guess or imagine anything to the contrary.

Granted
As Amended

REQUEST NO. S-19

Corporations organized under the laws of Cuba and Panama are free to keep their (securities) ~~funds~~ in the United States or out of the United States and once the funds are deposited in banks in the United States (for safekeeping), they have the right to thereafter freely remove them to banks outside the United States.

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REQUEST NO. S-20

You must be convinced beyond a reasonable doubt that at least one of the overt acts alleged in the indictment was proven in order to return a verdict of guilty as to any of the defendants.

From Judge Walsh's charge (at page 26) in *U. S. v. Giglio*, U. S. D. C., S. D. N. Y. Docket No. C142-72, delivered February 18, 1955 at page 22

ied

REQUEST NO. S-21

The two Haas opinions and the Burke opinion did not relate to any actual or possible income tax liability of the defendant Klein.

anted Amended

REQUEST NO. S-22

[Further,]* you are instructed that there is no charge in the indictment and no claim is made by the Government in this case that there was any violation, in any respect whatsoever, of either OPA or any of its regulations. Hence you must not consider or discuss the same.

anted

REQUEST NO. S-23

The right of Tivoli Trading Co. S. A. to pay Alprin, Koerner and Roer a bonus is not involved in this case. You must assume that Tivoli Trading Co. S. A. had that right.

*The word "Further" was added by the court.

Defendant Klein's Supplemental Requests to Charge (III)

REQUEST No. S-24

Granted As Amended

Evidence pertaining to the character of a defendant in respect to those traits of character which ordinarily would be involved in the commission of a crime like that charged in this case is regarded by the law as relevant to the question whether a defendant is innocent or guilty of the crime charged. You may, if your judgment so directs, reason that it is improbable that a person of such good character in such respects as was shown by the defendants' witnesses would have committed the crime charged in this indictment. Character evidence, in and of itself alone, may be sufficient to raise a reasonable doubt whether or not a defendant is guilty, and if a defendant's evidence of such good character does raise such a reasonable doubt in your mind then you must find that defendant not guilty.

REQUEST No. S-24

As Requested

Evidence pertaining to the character of a defendant in respect to those traits of character which ordinarily would be involved in the commission of a crime like that charged in this case is regarded by the law as relevant to the question whether a defendant is innocent or guilty of the crime charged. You may, if your judgment so directs, reason that it is improbable that a person of good character in such respects would have conducted himself as alleged. Character evidence, in and of itself alone, may be sufficient to raise a reasonable doubt whether or not a defendant is guilty, and a reasonable doubt in your mind requires that you must find such defendant not guilty.

Edgington v. *United States*, 164 U. S. 361 (1896)
Michelson v. *United States*, 335 U. S. 469 (1948)

Defendant Klein's Supplemental Requests to Charge (III)

REQUEST No. S-25

It is entirely proper for the Bureau of Internal Revenue to assert, and in good faith to seek to collect, by all proper means, income taxes which it believes are due and owing from a taxpayer.

It is the policy of the law to encourage individuals and corporations to settle and compromise disputes, including disputes concerning asserted income tax liability.

There has been some testimony in this case to the effect that the defendant Klein had made some offer to settle the claims of the Bureau of Internal Revenue asserted against him, his wife and the H. Harvey Company. This he had the absolute right to do—and it must not be considered by you as an admission that either he, his wife or the H. Harvey Company owed one penny in income taxes.

Defendant Haas' Requests to Charge

REQUEST No. 1

Withdrawn

Under Section 371 of Title 18 U. S. C., a conspiracy to defraud the United States includes thereunder as an offense interfering with or obstructing one of the lawful functions of the Government by deceit, craft, or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the over-reaching of those charged with carrying out the Government intention.

Hammerschmidt v. *U. S.*, 265 U. S. 182, 188.

REQUEST No. 2

Denied—Except As Adequately Covered in Other Language in the Charge

Presumptions of guilt are not lightly to be indulged from meetings between alleged co-conspirators.

U. S. v. *Di. Re,* 322 U. S. 581, 593.

REQUEST No. 3

Granted As Amended

An inference of participation in a conspiracy cannot be sustained by mere association and friendship between alleged co-conspirators [or the use of the office facilities of one by the other.]*

U. S. v. *Di. Re,* 332 U. S. 581, 594;
U. S. v. *Moloney,* 200 F.2 344, 347 (7th C.);
U. S. v. *Carengella,* 198 F.2, 3, 7 (7th C.), cert. den., 344 U. S. 881.

*Matter in brackets added by the court.

Defendant Haas' Requests to Charge

REQUEST No. 4

To sustain a conviction under the Fifth Count, the Government must prove beyond a reasonable doubt that the defendant wilfully conspired by trickery, chicane, and deceit to impede, obstruct, and impair the Treasury Department in its collection of taxes as distinguished from its function of assessing and determining their true tax liability.

Section 3651, 3640, 3641, Title 26 U. S. C.

REQUEST No. 5

The function of the Treasury Department in the collection of its taxes resides in the Collector of Internal Revenue for the district wherein the returns of the defendants named in the Fifth Count were filed, and the Government must prove beyond a reasonable doubt that these defendants wilfully conspired by trickery, chicane, and deceit to impede, obstruct, and impair the laws relating to his power to collect taxes allegedly due from the named defendants.

Section 3651 Title 26 U. S. C.
cf. *U. S.* v. *Wolper*, 88 F.2 715, 717 (2nd C.);
Rasquin v. *Muccini*, 72 F.2 688, 689 (2nd C.).

REQUEST No. 6

In order to constitute the impeding, obstructing, and impairing of the functions of the Treasury Department in the collection of its taxes, the Government must prove

beyond a reasonable doubt that a conspiracy existed by and between the named defendants to wilfully and by trickery, chicane, and deceit to interfere with and to prevent the Collector of Internal Revenue from taking any of the steps provided in Sections 3651, 3655(a), 3670, 3671, 3690, 3692, and 3693 of Title 26 U. S. C. to collect any income taxes allegedly due from the defendants herein charged.

cf. *U. S.* v. *Wolper*, 86 F.2 715, 717 (2nd C.).

REQUEST No. 7 — Denied

If all that the Government has proved beyond a reasonable doubt is that there was a conspiracy by and between the defendants on trial before you and the others named in the indictment either as co-conspirators or defendants, to conceal from the Treasury Department the true tax liability of the defendants named in the Fifth Count, then you must acquit the defendants, for that is not the charge in the Fifth Count.

REQUEST No. 8. — Denied

Unless the Government has proven beyond a reasonable doubt that an assessment had been made by the Commissioner of Internal Revenue against the defendants Haas, Halperin, Roer, and Koerner for alleged additional income taxes due from them, then these defendants could not have conspired with anyone to impede the collection of any tax allegedly due therefrom, and you shall acquit them.

Sections 3640, 3641 Title 26 U. S. C.

Defendant Haas' Requests to Charge

REQUEST No. 9

Even if you find that the Government has established beyond a reasonable doubt the existence of a conspiracy such as is charged in the Fifth Count, you shall nevertheless acquit the defendants if the Government has not proven that the Commissioner has made assessments for additional income taxes due from Halperin, Roer, Koerner, and Haas, for, without there having been an assessment by the Commissioner, there cannot be any impeding, impairing, or obstructing of the Treasury Department in the collection of income taxes.

REQUEST No. 10

The presumption of innocence as to which you have been already instructed is not a mere formality, and may not be overcome by mere suspicion, surmise, conjecture, or speculation. Difficulty or impossibility of proof is no substitute for actuality of proof, and a defendant is presumed to be innocent and entitled to be acquitted until he is proved guilty as charged beyond a reasonable doubt. The burden of proof is upon the Government at all times to prove all of the elements of this crime beyond a reasonable doubt, and that burden never shifts to the defendant.

REQUEST No. 10

The only presumption that exists in this case is that the defendants are presumed to be innocent until the conclusion of this case, and that presumption may not be overcome by mere suspicion, surmise, conjecture, or speculation. Difficulty or impossibility of proof is no substitute for actuality of proof, and the defendant is presumed to be

innocent and entitled to be acquitted until he is proved guilty as charged beyond a reasonable doubt. The burden of proof is upon the Government at all times to prove all of the elements of this crime beyond a reasonable doubt, and that burden never shifts to the defendant.

U. S. v. Vigorito, 67 F.2 329 (2nd C.), cert. den. 290 U. S. 705.

REQUEST No. 11 — Denied

A defendant is under no obligation to take the stand and to testify in his defense, nor to offer any evidence, nor to prove his innocence, and no inference of any kind may be made by you for his failure to do so.

REQUEST No. 12 — Granted

Fraud on the part of the defendants may never be presumed in a case such as this, but the burden is at all times upon the Government to prove beyond a reasonable doubt that the defendants wilfully conspired by trickery, chicane; and deceit to impede, impair, and obstruct the functions of the Treasury Department in the collection of its income taxes.

REQUEST No. 13 — Granted As Amended

The defrauding of the United States by impeding, impairing, obstructing and defeating the lawful functions of the Treasury Department in the collection of income taxes by deceit, craft, trickery, misrepresentation, or other dishonest means refers to conduct wilfully engaged in in order to cause the deceived person, to wit, the Government in this

case, to follow some course of conduct it would not have pursued but for the deceitful conduct or not to follow some course of conduct it would have pursued but for the deceitful conduct.

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REQUEST No. 13

The defrauding of the Treasury Department in the collection of its income taxes by deceit, craft, trickery, misrepresentation, or other dishonest means refers to conduct wilfully engaged in to cause the deceived person, to wit, the Government in this case, to follow some course of conduct, it would not have pursued but for the deceitful conduct.

cf. *U. S.* v. *Lepowitch*, 318 U. S. 702, 704.

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REQUEST No. 14

In determining whether the Government has proven the charge here beyond a reasonable doubt, you may consider whether it is likely that one contemplating fraud on the United States, to be made effective by concealment, would set forth the transactions in the Tivoli Trading Co., S. A., ledger, which he knew or had reason to know would be open to examination.

Delone v. *Commissioner of Internal Revenue*, 100 F.2d 507, 509 (3rd C.).

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s Amended

REQUEST No. 15

Admissions such as are found in the statements of H. H. Klein, Alprin and Haas to the Bureau of Internal Revenue are not sufficient in themselves to authorize a conviction of the defendant making the admissions unless his admissions are corroborated by independent evidence of the commission by that defendant of the crime charged.

Defendant Haas' Requests to Charge

REQUEST No. 15 — As Requested

Extra-judicial admissions such as the statements of H. H. Klein, Halperin, Koerner, and Haas to the Bureau of Internal Revenue are not sufficient in themselves to authorize a conviction of each of the defendants of the crime charged in the Fifth Count unless the admissions of each are corroborated by independent evidence of the existence of the crime charged.

U. S. v. *Calderon*, 75 Sup. Ct. 186, 188, 190-191 (1954);
Gulotta v. *U. S.*, 113 F.2 683, 685 (8th C.);
Daeche v. *U. S.*, 250 F.2 566 (2nd C.).

REQUEST No. 16 — Denied

The paragraph on the bottom of the first page of H. H Klein's 1947 income tax return is designed to make an accountant preparing the return responsible for an accurate, true, and full report in the return of all the information of which the accountant has any knowledge. It is not intended, however, to make him responsible for the truth and accuracy of information furnished to him for use in preparing the return where the verification of information by the accountant is not embraced in his employment in preparing the return.

§ 29.51-4 of Treasury Regulation 111;
G. C. M. 14509 Cum. Bull. June 1935, page 84.

REQUEST No. 17 — Denied

The defendant H. H. Klein was not required under the law to employ Maurice Haas to make a complete audit in the preparation of his 1947 tax return, or to deny to

Maurice Haas the privilege of rendering services in cases where a complete audit is not made. Furthermore, there is no provision of law which makes it impossible or inadvisable for an accountant to serve a client to any degree, no matter how limited, on a legitimate basis.

G. C. M. 14509 op. cit.

REQUEST No. 18

The signature of Maurice Haas and the firm of Haas, Schlesinger & Mayer on the 1947 tax return of H. H. Klein in no way implies that he certifies the data submitted or contained therein. He signs only to the effect that he prepared the return and does not know of any misstatement in the return.

REQUEST No. 19

For example, if you find that the defendant Haas or defendant Alprin only performed professional services to the other named alleged co-conspirators, he could not thereby become a member of a conspiracy by merely the rendition of such professional services even assuming that such a conspiracy existed.

REQUEST No. 19

If you find that the defendant Haas performed professional services to the other named co-conspirators, he could not become a member of any such conspiracy even assuming that such a conspiracy existed by merely the rendition of such professional services.

U. S. v. *Falcone,* 109 F.2 579 (2nd C.), aff'd. 311 U. S. 205.

Defendant Haas' Requests to Charge

REQUEST No. 20

Denied—Except As Adequately Covered in Other Language in the Charge

In order for you to find that the defendant Haas was guilty of the conspiracy charged in the Fifth Count, the Government must have proved by credible evidence beyond any reasonable doubt that the defendant Haas knew of this alleged conspiracy, and with an evil or bad motive performed an act or acts designed to promote and to aid in the attainment of the object of that known conspiracy.

U. S. v. *Lekacos,* 151 F.2 170, 173 (2nd C.), rev'd. on other grounds sub nom. *Kotteakos* v. *U. S.* 328 U. S. 750.

REQUEST No. 21

Denied

Where guilt depends largely upon circumstantial evidence, the burden rests upon the Government to prove its case not only beyond a reasonable doubt, but to the exclusion of every reasonable hypothesis of innocence.

Hanson v. *United States,* 208 F.2d 914, 916 (6th C.);
Becher v. *United States,* 5 F.2d 45 (2nd C.).

REQUEST No. 22

Granted

Neither the indictment nor the bill of particulars constitutes evidence whatsoever in this trial. The indictment is merely an accusation which the Government must prove to be true beyond a reasonable doubt by competent evidence produced before you. The bill of particulars is merely particularizations of the charge in the indictment.

Defendant Haas' Requests to Charge

REQUEST No. 23

The defendants have pleaded not guilty to the charge made in this indictment. Under our system of law and trial by jury, where the defendant pleads not guilty, he is presumed to be innocent. This presumption of innocence abides with him throughout each and every stage of the trial. Accordingly, unless evidence is produced by the Government which overcomes the presumption of innocence and which satisfies the jury beyond a reasonable doubt of a defendant's guilt, he must be acquitted.

REQUEST No. 24

The defendants are not on trial here for improper bookkeeping, and the Government cannot prevail merely by proof, whether by inference or by circumstantial evidence, [for example]* that proper accounting methods required that a transaction or transactions in the books of the Tivoli Trading Co., S. A., accurately reflect the nature of these transactions unless it has been shown by the Government beyond a reasonable doubt that the entries of such transactions, as reflected in the books of the Tivoli Trading Co., S. A., was for the purpose of wilfully concealing the nature [of their business activities and the nature]* and source of the income of the defendants in order to impede the Treasury Department in determining their true tax liability.

REQUEST No. 25

Where the facts or circumstances proved are susceptible of two [reasonable]* inferences, one pointing to innocence and the other to guilt, you must adopt the inference pointing to innocence and acquit the defendant.

Becher v. *U. S.*, 5 F.2d 45 (2nd C.).

*Matter in brackets added by the court.

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Granted
As Amended

REQUEST NO. 26

The Government and the defendants are equal before the law. ~~No greater credence shall be given to the testimony~~ of a witness because he is a Government witness ~~than to a~~ witness who ~~is not.~~

Granted
As Amended

REQUEST NO. 27

Criminal intent is never presumed. ~~An honest doubt~~ as to whether an amount represented ordinary income or capital gain or whether it was attributable ~~to defendant~~ in one calendar year as distinguished ~~from another~~ calendar year would negative any finding ~~of~~ wilfulness even though the doubt was not in fact ~~justified~~.

Bronson v. Commissioner of Internal Revenue, 183 F.2 529, 535 (2nd C.);

Delome v. Commissioner of Internal Revenue, 100 F.2 507 (3rd C.).

Defendant Haas' Requests to Charge

Granted

REQUEST No. 28

Wilful intent is an essential element of the offense charged in this case. Wilful as used in this statute means more than doing something deliberately. It means doing something with a bad purpose.

U. S. v. *Murdock*, 284 U. S. 141

REQUEST No. 29

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The Government cannot sustain a conviction on this charge of these defendants by piling inference upon inference where the burden on the Government is to prove its case and all of the elements thereof beyond a reasonable doubt.

Direct Sales Co. v. *U. S.*, 319 U. S. 703

REQUEST No. 30

Granted
As Amend

[But an]* inference may not be properly relied upon in support of an essential allegation of an indictment if an opposite inference may be drawn with equal consistency from the circumstances in the proof.

U. S. v. *Litberg*, 175 F.2 20, 21 (7th C.).

*Matter in brackets added by the court.

REQUEST NO. 31

If you find that the defendants, or any of them, participated in the conspiracy charged in the indictment, one of the questions for you to consider and determine is whether they acted wilfully. This is a question of their intent. To convict any defendant you must be satisfied from the evidence beyond a reasonable doubt, with respect to him individually, that he had an intent to impede, impair, and obstruct the Treasury Department in determining his true tax liability by trickery, chicane, and deceit.

Stated another way: I charge you that it is not enough for the prosecution to show the existence of an agreement and the participation therein of any particular defendant. This alone would not prove that such defendant participated in the agreement "knowingly and wilfully." With respect to each defendant, the prosecution has the further burden of proving beyond a reasonable doubt that such defendant participated in such agreement wilfully; that is, the prosecution must prove that such defendant entertained the specific intention to impede, impair, and obstruct the Treasury Department in ~~determining his true tax liability~~ the collection of the revenue, and not that he intended some result other than that. If you are not convinced beyond a reasonable doubt that such defendant acted wilfully, your verdict must be not guilty

Adapted from Charge of Judge Dimock, aff'd. in U. S. v. Flynn, 216 F.2, 354, 361 (2nd C.), cert. den. 75 Sup. Ct. 295.

Defendant Haas' Requests to Charge

REQUEST No. 32

Denied—Except As Adequately Covered in Other Language in the Charge

In considering whether or not a particular defendant became a member of the conspiracy, you must do so without regard to and independently of the statements and declarations of others. In orders words, you must determine the initial participation of a particular defendant from the evidence concerning his own actions, his own conduct, his own declarations, or his own statements, and his own connection with the actions and conduct of others.

Charge of Judge Dimock, aff'd. *U. S.* v. *Flynn*, 216, F.2 362 (2nd C.), cert. den. 75 Sup. Ct. 295.

REQUEST No. 33

Granted As Amended

[In other words,]* if you find that a witness in the case has lied as to any material fact, you may disregard his or her entire testimony or any part thereof.

*Matter in brackets added by the court.

Defendant Haas' Supplemental Requests to Charge

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REQUEST NO. 33A

If you find that the defendant Haas did not participate in the formation of these Cuban corporations, i.e. Economica Agencias and Exportadora Fernandina, and did not participate in any of the conversations between Klein, Alprin, Koerner, Roer and Rosenberg which gave rise to the payments by Tivoli Trading Company to Economica Agencias and Exportadora Fernandina, nor was present on those occasions, then the mere fact that Mr. Haas performed some professional services for Mr. Alprin in connection with such payments thereafter would be insufficient to render him a participant in such conspiracy, if any such existed, and you shall acquit him.

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REQUEST NO. 34

The fact that the defendant Alprin advised the defendant Haas that he received his bank draft under the circumstances which Mr. Alprin has testified to is insufficient in and of itself to make Haas a co-conspirator under the fifth count or to impart any knowledge to Mr. Haas of any conspiracy, if such existed, prior thereto. Before such services performed by Mr. Haas for Mr. Alprin could be said to render him a knowing and wilful participant in the conspiracy alleged in the fifth count, you would have to be convinced beyond a reasonable doubt that Mr. Haas at the time he rendered such services for Mr. Alprin had full knowledge of the existence of a conspiracy, if such existed, to impede, impair and obstruct the Bureau of Internal Revenue in ascertaining the true tax liability of the defendants

Alprin, Koerner, Roer and Klein on their income from the Harwood venture for the years 1944 to 1947, and that Haas rendered such services specifically to further such a conspiracy.

REQUEST No. 35

Denied—Except As Adequately Covered in Other Language in the Charge

The mere fact that the defendant Alprin advised the defendant Haas some time in April or May, 1947, that Mr. Klein caused the Tivoli Trading Company to issue a check to Economica Agencias in the sum of $264,162.70 with the instructions not to use the check but to deposit it in the Royal Bank of Canada, Toronto, if you believe such testimony of Alprin and Haas, would not make the defendant Haas guilty of any conspiracy in the fifth count.

REQUEST No. 36

Denied—Except As Adequately Covered in Other Language in the Charge

The defendant Haas cannot be held criminally liable under the charge in the fifth count unless the professional services that he rendered to the defendant Alprin were done with full knowledge of the existence of a conspiracy, if you find such, to impede the Bureau of Internal Revenue in determining the true tax liability of the defendants Alprin, Klein, Roer and Koerner on their income from the Harwood venture for the years 1944 to 1947, and Haas rendered such services specifically to further the object of such a conspiracy.

REQUEST No. 37

Denied—Except As Adequately Covered in Other Language in the Charge

The defendant Haas had a legal right in his capacity as an accountant, tax advisor, and attorney to advise Mr.

Alprin that on the facts stated to him by Mr. Alprin there was no legal obligation on Mr. Alprin's part to report in his tax return for the year 1947, and thereafter, the proceeds of his check from the Tivoli Trading Company unless you find that the defendant Haas did so dishonestly, with a corrupt motive, and with full knowledge that in so doing he was furthering a conspiracy, if such existed, to prevent the Bureau of Internal Revenue from determining the true tax liability of the defendants Klein, Alprin, Roer and Koerner on their income from the Harwood venture for the years 1944 to1947.

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REQUEST No. 38

There has been testimony elicited in this case with regard to negotiations to settle the alleged tax liability of H. H. Klein, his wife, and H. Harvey & Company from and after the jeopardy assessments, which were filed on or about March of 1948. In connection with such testimony, there has also been evidence of interrogatories prepared by the Bureau of Internal Revenue and submitted under oath by H. H. Klein. I charge you as a matter of law that the questions in answer to these interrogatories were submitted in connection with an attempt to compromise the alleged tax liability asserted against H. H. Klein, his wife, and H. Harvey & Company, and are, therefore, not to be considered or construed by you in any way, shape or manner as evidence against any of these defendants with relation to the charge in the fifth count.

In the alternative, if No. 38 is not granted.

Defendant Haas' Supplemental Requests to Charge

REQUEST No. 38A

Denied—Except As Adequately Covered in Other Language in the Charge

If you find that the defendant Haas participated as an accountant and tax adviser in behalf of H. H. Klein in his negotiations with the Bureau of Internal Revenue for a settlement of his tax liabilities from and after March 3, 1948 to 1951, and that in such negotiations Mr. Haas became aware that the Bureau of Internal Revenue was seeking information concerning the Harwood venture, such evidence would be insufficient to make him a party to a conspiracy, if such a conspiracy existed, unless you are convinced beyond a reasonable doubt that Mr. Haas with full knowledge of the existence of such a conspiracy wilfully and with an evil motive rendered advice to Mr. Klein with the specific knowledge and for the specific purpose of furthering such a conspiracy to impede the Bureau of Internal Revenue in determining the true tax liability of the defendants Klein, Alprin, Roer and Koerner on their income from the Harwood venture for the years 1944 to 1947, inclusive.

REQUEST No. 39

Denied—Except As Adequately Covered in Other Language in the Charge

It is important to keep in mind that the rendition of accounting, legal and tax services did not make Haas a co-conspirator with the clients he represented unless and until you are convinced beyond a reasonable doubt that such services were rendered with full knowledge of the existence of a conspiracy, if such existed, to impede the Bureau of Internal Revenue in determining the true tax liability of the defendants Klein, Alprin, Koerner and Roer on their income from the Harwood venture for the years 1944

to 1947, and further that such services were rendered for the specific purpose of furthering the object of such a conspiracy.

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REQUEST No. 40

The evidence is uncontradicted that the consolidated balance sheet (Ex. 371) which was prepared by the defendant Haas to compute the stock interest of H. H. Klein in the Cuban and Panamanian corporations, exclusive of Tivoli Trading Company, was for H. H. Klein's personal use and was prepared without audit and on figures submitted by H. H. Klein. The defendant Haas was under no legal obligation to verify those figures or to go behind those figures, and his failure to do so shall not be construed by you as any improper act on his part or any breach of his obligation as a certified public accountant, or as any evidence of knowing participation by him as a conspirator. Furthermore, his correction of his pencil copy of the consolidated balance sheet to reflect the $1,500,000.00 as an asset of Regan Potter instead of a commission paid, upon instructions of H. H. Klein, can in no wise be construed by you in and of itself as an improper act on the part of Haas or any breach of his obligation as a certified public accountant, or considered as evidence of knowing participation by him in the conspiracy charged in the fifth count.

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REQUEST No. 41

The fact that the defendant Klein, Rosenberg and coconspirators Rokoff and Silver made use of the premises of Haas, Schlesinger & Mayers for the use of their per-

sonal business shall in no wise be construed by you as evidence of any conspiracy between the defendant Haas and the defendant Klein, Rosenberg, Rokoff and Silver, for, participation in a conspiracy cannot be predicated upon mere association, nor may guilt be founded upon mere association.

REQUEST No. 42

Denied—Except As Adequately Covered in Other Language in the Charge

Whether the $35,000.00 loan made by Tivoli to La Ribera was, as H. H. Klein testified, to be repaid in services rendered by Haas, Schlesinger & Mayers in the future, or was, as Mr. Haas testified, when he tendered it back, if you believe that he did, in effect a gift, is totally immaterial in determining Haas' guilt or innocence under the fifth count. The $35,000.00 transaction is only relevant insofar as it may shed some light, if it does, on whether or not the defendant Haas had knowledge of the purpose for and formation of these Cuban corporations in June of 1946, and the payments by Tivoli of the bank drafts to Economica Agencias and Exportadora Fernandina. If you find from the evidence that the $35,000.00 transaction did not afford Mr. Haas any knowledge of the existence of any conspiracy, if you find such existed, to form these Cuban corporations and make these payments into Economica Agencias and Exportadora Fernandina for the purpose of impeding the Bureau of Internal Revenue in determining the true tax on those amounts, and if you find further that at the time Mr. Haas prepared H. H. Klein's declaration of estimated tax for 1947 and prepared his 1947 return, and also at the time he rendered his services for Alprin with regard to his bank draft, he had no knowledge of the exist-

ence of any such conspiracy, if such existed, then the mere existence of the transaction between Tivoli and La Ribera would be insufficient to convict him of this charge in the fifth count, and you shall acquit him.

Denied—Except As Adequately Covered in Other Language in the Charge

REQUEST No. 43

The transaction whereby a check was issued by Tivoli Trading Company to La Ribera in the sum of $35,000.00 in and of itself is insufficient to find the defendant Haas guilty under the fifth count for the evidence is uncontradicted that at the time it was issued it was (a) a loan and not a commission or a bonus for a job well done in Harwood, (b) it was not a liquidating dividend of a stock interest in Tivoli, and (c) the check was cashed and distributed as soon as the account was unblocked in Canada in February, 1949, and his share was reported in his tax return for that year.

Denied—Except As Adequately Covered in Other Language in the Charge

REQUEST No. 44

If you believe the defendant H. H. Klein that this $35,000.00 was a loan but was to be applied by Haas, Schlesinger & Mayers for services to be rendered to H. H. Klein or any of his interests in the future, and you further find that a separate conspiracy existed between H. H. Klein and Haas in that regard to permit Haas to claim a capital gain on the $35,000.00 instead of reporting it as ordinary income for services rendered in the years subsequent to the issuance of the loan, you must acquit the defendant Haas for that is not what the defendant Haas is charged with in the fifth count.

Defendant Haas' Supplemental Requests to Charge

REQUEST No. 45

Denied—Except As Adequately Covered in Other Language in the Charge

Furthermore, even if you were to find from the evidence that the $35,000.00 transaction was a scheme or conspiracy between Mr. Klein and Mr. Haas to permit Mr. Haas and his two partners to evade the payment of a proper income tax on this money as, if and when Mr. Haas and his firm earned it by the rendition of services to H. H. Klein and his interests in the years subsequent to the date when the loan was issued, you must acquit the defendant Haas for the defendant Haas is not charged with evading any income taxes on this amount in the fifth count or on any of his income in the fifth count, nor has the Government so contended under the charge in the fifth count.

Defendant Alprin's Requests for Charge

Defendant Alprin's Request No. 1

The defendants on trial in this case are presumed to be innocent. This means that they are presumed to be innocent of the charge that they conspired with others to defraud the United States by impeding and obstructing the Treasury Department in the collection of income taxes. The presumption continues to operate in their behalf until it is overcome beyond a reasonable doubt by competent evidence. It attends the defendants not only throughout the trial, but also during your deliberations after the case has been submitted to you for your verdict and until you actually arrive at a verdict. The burden of overcoming this presumption at all times rests upon the government and never is upon the defendants. If the evidence introduced as to any defendant does not overcome this presumption of innocence to your satisfaction, to a moral certainty and beyond all reasonable doubt, you must find that defendant not guilty.

Defendant Alprin's Request No. 1

The defendants on trial in this case are presumed to be innocent. So far as the defendant Alprin is concerned, this means that he is presumed to be innocent of the charge that he conspired with others to defraud the United States by impeding and obstructing the Treasury Department in the collection of income taxes. This presumption has the weight and effect of evidence in the defendants' behalf. It continues to operate in their behalf until it is overcome beyond a reasonable doubt by competent evidence. It attends the de-

fendants not only throughout the trial, but also during your deliberations after the case has been submitted to you for your verdict and even until you actually arrive at a verdict. The burden of overcoming this presumption at all times rests upon the government and never is upon the defendants and if the evidence introduced does not overcome this presumption of innocence to your satisfaction, to a moral certainty and beyond all reasonable doubt, you must find the defendants not guilty.

Agnew v. *U. S.*, 165 U. S. 36; 49-52.
Chaffee & Co. v. *U. S.*, 85 U. S. 516, 545-6.
Smith v. *U. S.*, 157 Fed. 721, 730 (8 Cir. 1907).

DEFENDANT ALPRIN'S REQUEST No. 2 Granted As Amended

The presumption of innocence as to which you have been already instructed is not a mere formality, and may not be overcome by mere suspicion, surmise, conjecture, or speculation. Difficulty or impossibility of proof is no substitute for actuality of proof, and a defendant is presumed to be innocent and entitled to be acquitted until he is proved guilty as charged beyond a reasonable doubt. The burden of proof is upon the government at all times to prove all of the elements of this crime beyond a reasonable doubt and that burden never shifts to the defendant.

DEFENDANT ALPRIN'S REQUEST No. 2 As Re

The presumption of innocence as to which you have been already instructed is not a mere formality. Every juror is bound to entertain it conscientiously and sincerely without any mental reservation or evasion whatsoever and is to give the defendants the full benefit of it.

Defendant Alprin's Requests for Charge

DEFENDANT ALPRIN'S REQUEST NO. 3

The indictment by the Grand Jury is no evidence whatsoever of the defendants' guilt. An indictment is nothing more or less than an accusation in writing without probative or evidentiary force or effect. Innocent as well as guilty men have been indicted. You will not give any weight whatsoever to the fact that an indictment has been returned against these defendants. Nor will you give any weight whatsoever to the allegations of the indictment. They do not create, and you should not permit them to create, even a suspicion of guilt.

Similarly, the fact that there were originally five counts in this indictment is not to be taken by you as evidence of anything and, [as I have heretofore emphasized,]* certainly, not as evidence of guilt on the single remaining count of the indictment.

Cooper v. *U. S.*, 9 F. 2d 216, 226 (8 Cir., 1925)

DEFENDANT ALPRIN'S REQUEST NO. 4

Your verdict should represent the opinion of each member of the jury and must express your personal conclusion based upon the evidence in the case. While it is the duty of each juror to confer with his fellows and to compare his views with them, no juror should acquiesce against his individual judgment in the conclusions reached by other jurors, whether the other jurors represent a majority or a minority of the jury. Each juror, having in view his duties and responsibilities should have his own mind con-

*Matter in brackets added by the court.

vinced beyond a reasonable doubt before he can conscientiously consent to a verdict of guilty and no one of you may surrender his conviction of the guilt or innocence of the defendant, or of reasonable doubt of guilt merely to prevent a disagreement.

United States v. *Samuel Dunkel & Co.*, 173 F. 2d 506, 508 (2nd Cir. 1949)

United States v. *Reid*, 210 Fed. 486, 494 (D. Del. 1913)

United States v. *Kenney*, 90 Fed. 257, 274 (D. Del. 1898)

Stewart v. *United States*, 300 Fed. 769, 782 (8th Cir. 1924)

DEFENDANT ALPRIN'S REQUEST NO. 5.

(In other words)

A defendant in a criminal case is presumed to be innocent until his guilt has been established by competent evidence beyond a reasonable doubt. When a person is charged with the commission of a crime, he is not required to prove that he did not commit the crime. It is the government which is, by law, burdened with the obligation of proving the case set out in the indictment, beyond a reasonable doubt. And before, ~~the jury~~ can lawfully return a verdict of guilty, ~~they~~ must find that every element essential to establishing guilt has been so proven. The law demands acquittal, unless every material and necessary fact upon which a conviction depends is proved, to the satisfaction of each individual juryman, beyond a reasonable doubt.

Holland v. United States
348 U. S. 121, 138 (1954)

United States v. Farina
184 F. 2d 18, 20
(2 Cir., 1950)

Egan v. United States
287 F. 958, 967 (1923)

United States v. Kemble
197 F. 2d 316, 320, n.16
(3 Cir., 1952)

United States v. Shapiro
103 F. 2d 775, 776
(2 Cir., 1939).

DEFENDANT ALPRIN'S REQUEST NO. 6

Granted As Amended

On the other hand, if the prosecution has failed to establish as to any defendant or defendants to a moral certainty and beyond all reasonable doubt any one element of the offense with which that defendant or those defendants are charged and which it is necessary to establish in order to convict, then you must find that defendant or those defendants not guilty.

DEFENDANT ALPRIN'S REQUEST NO. 6

As Requested

If the prosecution has failed to establish to a moral certainty and beyond all reasonable doubt any one element of the offense with which the defendants are charged and which it is necessary to establish in order to convict, or if there remains in the minds of the jurors a reasonable doubt or to whether or not the prosecution has established any such element constituting the offense to a moral certainty and beyond all reasonable doubt, then you must find the defendants not guilty. This applies to the jurors as a whole and to each individual juror.

DEFENDANT ALPRIN'S REQUEST NO. 7

Granted

Reasonable doubt is a doubt arising from the evidence, or from a lack of evidence, after consideration of all the evidence. It is not a vague, speculative something but is just such a doubt as would cause reasonable men to hesitate to act upon it in matters of importance to themselves.

Bishop v. United States, 107 F.2d 297, 303 (D. C. Cir., 1939), approved in Holland v. United States, 348 U. S. 121, 140 (1954)

DEFENDANT ALPRIN'S REQUEST NO. 8

Mere probabilities or suspicions are not sufficient to warrant a conviction. It is not sufficient even that the greater weight or preponderance of the evidence supports the allegations of an indictment unless you are convinced therefrom of guilt beyond a reasonable doubt. It is not sufficient that upon the doctrine of chances, it is more probable that the defendants are guilty than innocent.

DEFENDANT ALPRIN'S REQUEST NO. 8

Mere probabilities or suspicions are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of an indictment, nor is it sufficient that upon the doctrine of chances, it is more probable that the defendants are guilty than innocent.

DEFENDANT ALPRIN'S REQUEST NO. 9

In determining the credibility and the weight to be given to the testimony of witnesses, the government is to be considered as any other party and its witnesses like any other witnesses. Neither more nor less weight or credence is to be given the testimony of any witness because he or she was called by the government than if he or she had been called by [a]* defendant.

*The court substituted "a" for "the".

Defendant Alprin's Requests for Charge

DEFENDANT ALPRIN'S REQUEST No. 10 Granted

Although circumstantial evidence alone or in connection with other evidence, may justify a conviction, great care must be exercised in drawing inferences from circumstances alone, and mere suspicions will not warrant a conviction.

Vick v. *United States*, 216 F. 2d 228, 232 (5 Cir., 1954)

Defendant Alprin's Requests for Charge

DEFENDANT ALPRIN'S REQUEST NO. 11

If all the circumstances taken together are consistent with any reasonable hypothesis which includes the innocence of a defendant, the prosecution has not proved his guilt beyond a reasonable doubt, and it is your duty to acquit such defendant.

Judge Medina in *United States* v. *Foster*, 9 FRD 367, 393 (S. D. N. Y. 1949)

United States v. *Arroze Packing Corp.*, 153 F. 2d 669, 671 (2 Cir., 1946)

United States v. *Shapiro*, 103 F. 2d 775, 776 (2 Cir., 1939)

Defendant Alprin's Requests for Charge

DEFENDANT ALPRIN'S REQUEST NO. 12

Denied—Except As Adequately Covered in Other Language in the Charge

It is your duty to acquit the defendant, ALPRIN, unless you find that the circumstantial evidence relied on by the government excludes every reasonable hypothesis of innocence; it must exclude every reasonable doubt of the defendant's guilt.

United States v. *Kemble,* 197 F. 2d 316, 320 (3 Cir., 1952)

DEFENDANT ALPRIN'S REQUEST NO. 13

Denied—Except As Adequately Covered in Other Language in the Charge

Before you can find any defendant guilty in this case, you must believe that the circumstances proved as to him exclude all possibility of his innocence and that, after considering all of the inferences reasonably to be drawn from the circumstances, that your sound judgment requires you to reject other inferences and accept only the inference of guilt.

Instruction of Judge Schwellenbach in *United States* v. *Thomas,* et al, 52 F. Supp. 571, 580 (D. Wash., 1943)

Shannabarger v. *United States,* 99 F. 2d 957, 961 (8 Cir., 1938)

DEFENDANT ALPRIN'S REQUEST NO. 14

Granted

The gist of the offense of conspiracy is agreement among two or more persons to commit an offense, followed by an act of one or more of them to accomplish the object of the conspiracy. Even if a conspiracy were entered into, it does

not constitute a crime, unless an overt act has been performed to carry out its object.

United States v. *Falcone*, 311 U. S. 205, 210 (1940)

Singer v. *United States*, 208 F.2d 477, 480 (6 Cir., 1953)

18 U. S. C. Section 371.

DEFENDANT ALPRIN'S REQUEST NO. 15

A conspiracy is constituted by an agreement. While it is not essential that the agreement should be formal, it is necessary that the minds of the parties meet, so as to bring about an intelligent and deliberate agreement to do the acts.

When the government relies upon circumstantial evidence to establish the conspiracy, as here, the circumstances must be such as to warrant your finding that the alleged conspirators had some unity of purpose, some common design and undertaking, some meeting of minds in an unlawful arrangement and the doing of some overt act to accomplish its object.

State v. *Hopkins*, 219 Pac. 1106 (Mont. 1923)
Shannabarger v. *United States*, 99 F. 2d 957, 961 (8 Cir., 1938)

DEFENDANT ALPRIN'S REQUEST NO. 16

The basis of a conspiracy is the unity of design and purpose. It is what has been agreed to and not what has been done; and so it has been held that several persons may, simultaneously, actually do things, without incurring crimi-

nal liability, which, if they were the object of a preconcerted design, would make them guilty of conspiracy.

Mere similarity of conduct on the part of various defendants and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, does not [without more]* establish the existence of a conspiracy.

Asgill et al v. *United States*, 60 F. 2d 780, 785 (4 Cir., 1932)

Instruction by Judge Mathes in *United States* v. *Schneiderman*, 106 F. Supp. 906, 932 (D. Calif., 1952)

DEFENDANT ALPRIN'S REQUEST NO. 17 — **Granted As Amended**

In order to find any defendant guilty of the conspiracy charged, you must find more than that he knew of the existence of the alleged conspiracy and you must find that he affirmatively agreed at least tacitly to take some part in the conspiracy.

The government must have proved beyond a reasonable doubt that a defendant was knowingly associated in the unlawful common enterprise; that he participated in it wilfully with intent to further the common purpose or design.

DEFENDANT ALPRIN'S REQUEST NO. 17 — **As Requested**

In order to find the defendant, ALPRIN, guilty of the conspiracy charge, you must find more than that he knew of the existence of the alleged conspiracy. You must find that he affirmatively agreed to take some part in the conspiracy.

*Matter in brackets added by the court.

Defendant Alprin's Requests for Charge

United States v. *Dellaro*, 99 F. 2d 781, 783 (2nd Cir., 1938)

The government must have proved beyond a reasonable doubt that ALPRIN was knowingly associated in the unlawful common enterprise; that he participated in it wilfully with intent to further the common purpose or design.

United States v. *Koch*, 113 F. 2d 982, 983 (2 Cir., 1940)

United States v. *Schneiderman*, 106 F. Supp. 906, 933 (D. Calif. 1952)

Granted
As Amended

DEFENDANT ALPRIN'S REQUEST NO. 18

But even if you find that the defendant entered into a conspiracy, it does not follow that he is liable for everything any one of the original participants does, and even for what those do who join later. Nothing could be more untrue. Nobody is liable in conspiracy, except for the fair import of the concerted purpose or agreement as he understands it; if later comers change that, he is not liable for the change.

You may not find the defendant to have been a conspirator, unless the unlawful acts charged were embraced within the common purposes of which he was aware. It is never permissible to enlarge the scope of the conspiracy itself by proving that some of the conspirators, unknown to the rest, have done what was beyond the reasonable intendment of the common understanding.

Judge Learned Hand in
United States v. Peoni
100 F. 2d 401, 403
(2 Cir., 1918).

United States v. Crimmins
123 F. 2d 271, 273
(2 Cir., 1941)

Defendant Alprin's Requests for Charge

DEFENDANT ALPRIN'S REQUEST NO. 19

The fact that A makes a criminal agreement with B does not cause A to become a party to [every]* conspiracy into which B may subsequently enter or may have entered with third persons. The scope of the agreement actually made between A and B limits the conspiracy between them.

United States v. *Andolschek*, 142 F.2d 503, 507 (2 Cir., 1944)

DEFENDANT ALPRIN'S REQUEST NO. 20

If an offense was committed by one of the defendants or co-conspirators, but it was not in fact done in furtherance of the conspiracy, did not fall within the scope of the unlawful project, or could not have been reasonably foreseen as a necessary or natural consequence of the unlawful agreement, then you may not hold the others responsible for it.

Pinkerton v. *United States*, 328 U. S. 640, 647, 648 (1946)

*Matter in brackets added by court.

Granted
As Amended

DEFENDANT ALPRIN'S REQUEST NO. 21

Persons having no knolwedge of the conspiracy are not conspirators, even though their actions may further the object of a conspiracy. Thus, even if ~~the~~ a defendant ~~ALPRIN~~ committed overt acts in furtherance of the conspiracy, you must find him not guilty if he did not join in the criminal agreement.

United States v. Falcone
311 U. S. 205, 210, 211 (1940)

Marino v. United States
91 F. 2d 691, 695.
(10 Cir., 1937)

The fact that a person associates with conspirators with knowledge that they contemplate doing an illegal act does not make him a co-conspirator, unless he knowingly enters into the conspiracy and assists in the furtherance thereof. Unless the Government proves to your satisfaction and beyond a reasonable doubt that a defendant knowingly entered into the conspiracy as charged, and did some act in furtherance thereof, then it will be your duty to return a verdict of "not guilty", despite the fact he might have had knowledge that others contemplated doing some illegal act.

Butler v. United States,
197 F.2d 561, 564 (10 Cir., 1952)

DEFENDANT ALPRIN'S REQUEST NO. 23 Granted.

DEFENDANT ALPRIN'S REQUEST NO. 23 Granted As Amended

~~In your consideration of the evidence, you should first determine whether or not the conspiracy existed as charged in the indictment.~~ If you conclude that such conspiracy did exist, you should next determine, as to each defendant, whether or not he ~~or she~~ was knowingly and wilfully a party to the conspiracy.

In considering whether or not a particular defendant was a member of the conspiracy, you must do so without regard to and independently of the acts, statements or declarations of others. ~~That is to say, you must determine the issue as to the membership of a particular defendant in the conspiracy from any~~ the ~~evidence as to his statements or declarations and acts~~ his or conduct.

Instruction by Judge Mathes
in United States v. Schneiderman,
936
106 F.Supp. 906 (D.Calif., 1952).

(Read to Jury.)

DEFENDANT ALPRIN'S REQUEST NO. 24

You must determine the (issues as to) membership of a particular defendant in a conspiracy from the evidence concerning his own actions, his own conduct, his own declarations, or his own statements, and his own connection with the actions and conduct of others.

A particular defendant's connection with a conspiracy cannot be established by the acts or declarations of other defendants in his absence. And a defendant cannot be bound by the acts or declarations of other defendants until (a) the conspiracy has been established, and (b) the defendant's participation in the conspiracy has been established.

United States v. Foster
9 FRD 367, 378
(S. D. N.Y. 1949).

May v. United States
175 F. 2d 994, 1007, 1008
(D. C. Cir., 1949).

Defendant Alprin's Requests for Charge

DEFENDANT ALPRIN'S REQUEST NO. 25 — Granted As Amended

[Further,]* any of the statements made by any of the defendants after the conspiracy ended, are not binding upon any of the other defendants and may not be used to connect them with the conspiracy.

Krulewitch v. *United States*, 336 U. S. 440, 442-3
Fiswick v. *United States*, 329 U. S. 211, 217

DEFENDANT ALPRIN'S REQUEST NO. 26 — Granted

The guilt or innocence of each defendant must be determined by you separately. Each defendant has the same right to that kind of consideration on your part as if he were being tried alone.

Charge of trial judge, quoted in *Blumenthal* v. *United States*, 332 U. S. 539, 560 (1947)

*The court added the word "further."

Granted
As Amended

DEFENDANT ALPRIN'S REQUEST NO. 27.

You must acquit a (here on trial) defendant, if you find that he did not know of, or participate in, any conspiracy with (any co-conspirator as charged) ~~some or all of the defendants in this~~ count, but that he was acting individually ~~with respect~~ to his own individual tax return.

Marcante v. United States
49 F. 2d 156, 158
(10 Cir., 1931)

Granted
As Amended

DEFENDANT ALPRIN'S REQUEST NO. 28

In other words, to establish (his guilt as a participant in) a criminal conspiracy, the Government must prove that a defendant had a corrupt motive or intent. There must be an evil design. Mere knowledge, acquiescence, or approval of an act, without cooperation or agreement to cooperate does not make one a member of a conspiracy. There must be intentional participation in the transaction with the view of furthering the common purpose.

Cruz v. United States
106 F.2d 828
(10 Cir., 1939).

Lucadamo v. United States
280 Fed. 653, 657
(2 Cir., 1922)

United States v. Thomas
52 F. Supp. 571, 580
(D. Wash., 1943)

Granted
As Amended

DEFENDANT ALPRIN'S REQUEST NO. 29

Unless you can find from the evidence beyond a reasonable doubt (whose guilt or innocence you are deliberating on) that the defendant ~~Alprin~~ had a corrupt and evil intent and acted with full knowledge that the things being done were done for the purpose of defrauding the United States, you must find that ~~the~~ defendant ~~Alprin~~ not guilty.

Berenbein v. United States,
164 F.2d 679, 684 (10 Cir., 1947).

DEFENDANT ALPRIN'S REQUEST NO. 29

Defendant Alprin's Requests for Charge

DEFENDANT ALPRIN'S REQUEST NO. 30 — **Granted**

Failure to file a correct income tax return does not necessarily constitute fraud. Fraud implies bad faith, intentional wrong-doing and a sinister motive. It is never imputed or presumed and does not arise from circumstances which create only suspicion.

Davis v. *Commissioner of Internal Revenue*, 184 F. 2d 86, 87 (10 Cir., 1950)

DEFENDANT ALPRIN'S REQUEST NO. 31 — **Denied—Except As Adequately Covered in Other Language in the Charge**

If you find that the defendants, or any of them, misunderstood what the law requires, you must acquit them.

Adapted from *United States* v. *Martell*, 3 Cir., 199 F. 2d, 670, 672

DEFENDANT ALPRIN'S REQUEST NO. 32 — **Denied—Except As Adequately Covered in Other Language in the Charge**

The first four counts of the indictment are no longer before you for your consideration. Those counts, you will recall, charged in counts 1, 2 and 3 that, in 1948, defendant HYMAN H. KLEIN, filed a Federal income tax return which was false in that it treated as a capital gain in 1947 that which was in individual income in 1944, 1945 and 1946; that this constituted an attempt at evasion of KLEIN's individual income taxes for 1944, 1945, and 1946 and that the eight remaining defendants in said first three counts aided and abetted KLEIN in each such attempt. The indictment further charged in count 4, that the nine named defendants and two co-conspirators combined to attempt to evade the 1944,

1945 and 1946 individual income taxes of said KLEIN and three other defendants, residents of Canada.

I have ruled, as a matter of law, that all of the defendants before you were required to be acquitted under the first four counts. I did so because, as a matter of law, the seventeen corporations were acceptable entities for tax purposes and not a sham and that their income was theirs and not that of KLEIN and his three Canadian associates. KLEIN, therefore, did not, as charged in counts 1, 2 and 3 of the indictment, attempt to evade individual income taxes in 1944, 1945 and 1946 by the means of reporting on a capital gain basis in 1947 and the remaining eight defendants in those counts could not have aided or abetted him in a crime he did not commit, nor did the defendants, as charged in count 4, conspire to evade the income taxes of KLEIN and his three Canadian associates for the years 1944, 1945 and 1946.

Judge Sugarman's Opinion on Motion for Judgment of Acquittal, pages 1 and 2.

Defendant Alprin's Supplemental Requests to Charge (I)

DEFENDANT ALPRIN'S REQUEST NO. S-1

Denied—Except As Adequately Covered in Other Language in the Charge

You are instructed that it is no part of your function as jurors in this case to determine the amount of tax, if any, owing from the defendant ALPRIN for the year 1952. That is for another court, the Tax Court, to determine. Your function is only to determine whether the defendant ALPRIN wilfully and knowingly conspired to defraud the United States by impeding the Treasury Department in the collection of income taxes.

DEFENDANT ALPRIN'S REQUEST NO. S-2

Denied—Except As Adequately Covered in Other Language in the Charge

I charge you that the evidence as to ALPRIN'S part in the negotiation of the contract between Agencias and R. C. Williams; the division of said contract into two parts—a basic agreement and a supplemental agreement; the obtaining of opinions regarding the taxability of Agencias under such contract; and as to his receipt of legal fees from R. C. Williams has been admitted only as background, to show the relations of the parties. It was originally admitted in connection with the first four counts of the indictment, as to which these defendants have been acquitted. The evidence referred to does not in any way prove any one of the elements of the conspiracy charged in the single remaining count of the indictment and should not be considered by you for that purpose.

DEFENDANT ALPRIN'S REQUEST NO. S-3

Denied

There is no evidence before you that the defendant ALPRIN had anything to do with the preparation of the in-

come tax returns of Klein for 1947, Roer for 1950, Haas for 1949, or Koerner for 1952. Nor is there any evidence that he had anything to do with the preparation of the income tax returns of any of the defendants, other than his own, in any year.

Denied—Except As Adequately Covered in Other Language in the Charge

DEFENDANT ALPRIN'S REQUEST NO. S-4

Participation in, or knowledge of, a conspiracy may not be inferred from casual or unexplained meetings among some or all of the defendants.

Dennert v. UNITED STATES, 147 F. 2d 286 (6 cir., 1945)

Granted As Amended

DEFENDANT ALPRIN'S REQUEST NO. S-5

Just because seven defendants and three co-conspirators are charged in this indictment does not mean that you must find all [the defendants]* guilty or all not guilty.

United States v. *Belisle*, 107 F. Supp, 283, 285-6 (W. D. Wash. 1951)

Denied—Except As Adequately Covered in Other Language in the Charge

DEFENDANT ALPRIN'S REQUEST NO. S-6

Conspiracy in this case means that, on the part of two or more persons, there was a common purpose, supported by a concerted action, to defraud; that each had the intention to defraud; and that all had such intention; and that each understood the others as having a purpose to defraud.

United States v. *Frisbie*, 28 Fed. 808, 809 (C. C. La., 1886), aff'd 157 U. S. 160.

*The court substituted the words in brackets.

Defendant Alprin's Supplemental Requests to Charge (1)

DEFENDANT ALPRIN'S REQUEST NO. S-7

Denied—Except As Adequately Covered in Other Language in the Charge

The conspiracy charged in this indictment is a conspiracy to defraud the United States by impeding, impairing and obstructing the Treasury Department in the exercise of its income tax collection function.

To conspire to defraud the United States, in this sense, means to agree to interfere with tax collection by deceit or by dishonest means and to do some act to accomplish such interference. Unless, therefore, you find that one or more of the alleged conspirators, acting pursuant to the agreement among all, said or did something to a Government official, charged with the duty to collect income taxes, to prevent that official from carrying out his duties, you must acquit the defendants.

Based on *Hammerschmidt* v. *United States*, 265 U. S. 182, 188 (1924)

You may not find the defendants guilty unless you conclude beyond a reasonable doubt that they set in motion false representations for the purpose of inducing government officials to act in a way which would be unlawful, if the real truth were known. Please keep in mind, however, that the false representations must be made to persons charged with the duty of collecting taxes and required to act upon such representations. It is not enough, and may not support a verdict of guilty, if you find that some or all of the defendants made false statements to private individuals or to government officials other than those charged with the duty of collecting taxes.

United States v. *Lonabaugh*, 158 Fed. 314, 315—quoted in *United States* v. *Moore*, 173 Fed. 122, 130.

Palmer v. *Colladay*, 18 App. D. C. 426—quoted in *United States* v. *Moore*, 173 Fed. 122, 128.

DEFENDANT ALPRIN'S REQUEST NO. S-8

In determining whether the United States was impeded in ascertaining the facts regarding the tax liability of the defendants, you may consider that as early as July, 1947, the Government knew of the existence of and subpoenaed the records of each of the corporations referred to in the testimony under the fifth count. Included among such corporations were Tivoli, Economica, Fernandina, Ribera, etc.

DEFENDANT ALPRIN'S REQUEST NO. S-9

If you conclude that H. H. KLEIN did not properly answer interrogatories submitted to him by the Bureau of Internal Revenue with regard to the officers or stockholders of Economica, Fernandina, etc. and thereby withheld information from the Bureau, you may not charge such withholding of information to the defendant, ALPRIN. There is no evidence whatever in this record that ALPRIN had anything to do with the formulation of, or preparation of, the answers to such interrogatories. Nor is there any evidence that ALPRIN was consulted regarding them or that he knew of them and acquiesced in them.

Defendant Alprin's Supplemental Requests to Charge (1)

DEFENDANT ALPRIN'S REQUEST NO. S-10 **Denied**

If you conclude that the difference of opinion between KLEIN and ALPRIN regarding the nature of the Tivoli draft to Economica relates only to a private dispute between KLEIN, on the one hand, and ALPRIN, ROER and KOERNER, on the other, and has nothing whatever to do with impeding the Government in the collection of taxes, then you must acquit the defendants.

DEFENDANT ALPRIN'S REQUEST NO. S-11 **Denied**

Under the evidence in this case, there are three separate sets of facts which you must consider. The first of these involves the contention by the Government that KLEIN and ROKOFF acted in concert to make changes in the books of Tivoli and other corporations; the second of these is that ALPRIN, ROER, KOERNER, HAAS and KLEIN, agreed to conceal the nature and source of the income from the Harwood venture and that ALPRIN's, ROER's and KOERNER's reporting of their drafts from Tivoli as capital gain, in some way helped accomplish such concealment; the third is that KLEIN asked ALPRIN, ROER and KOERNER to hold the Tivoli bank drafts for some other unlawful purpose.

DEFENDANT ALPRIN'S REQUEST NO. S-12 **Denied**

You should take care to consider the evidence relating to each conspiracy alleged and the overt acts or admissions or declarations produced with reference to each separately from that relating to each other conspiracy charged.

Defendant Alprin's Supplemental Requests to Charge (I)

Kotteakos v. *United States*, 328 U. S. 750, 769-70 (1946).

DEFENDANT ALPRIN'S REQUEST NO. S-13

So far as the first set of facts is concerned, you are instructed that there is no evidence in this record from which you can conclude that the defendant ALPRIN had any knowledge of, or participated in any way in, the rewriting of the Tivoli books or any other corporate books. If you find that the only conspiracy proved by the Government beyond a reasonable doubt was that between KLEIN and ROKOFF to rewrite the books of Tivoli or other corporations, then you must acquit the defendant ALPRIN.

Memorandum Opinion on Motions for Judgment of Acquittal, pp. 15-16.

DEFENDANT ALPRIN'S REQUEST NO. S-14

If you find that there is no relation between, on the one hand, the changes in the Tivoli and other corporate books and KLEIN's testimony to Internal Revenue regarding said book entries and, on the other hand, ALPRIN's reporting his draft from Tivoli as a capital gain in 1952; and, if you further find that the former was designed to mislead the Government but the latter was not, then you must acquit the defendant ALPRIN.

Based upon *United States* v. *Siebricht*, 59 F. 2d 976, 978 (2d Cir. 1932)

Defendant Alprin's Supplemental Requests to Charge (1)

DEFENDANT ALPRIN'S REQUEST NO. S-15 — Denied

So far as the second set of facts is concerned, on the evidence before you, you may find that the drafts received by ALPRIN, ROER and KOERNER represented either (1) the liquidation of interests in Tivoli; or (2) a bonus or commissions; or (3) a gift.

DEFENDANT ALPRIN'S REQUEST NO. S-16 — Denied

If you find from all the evidence in this case that the approximately $264,000 paid to the defendant ALPRIN by Tivoli Trading Company was neither a liquidating dividend nor compensation for services but was a gift, then it was not taxable to ALPRIN at all. Under such circumstances, you would be required to find that ALPRIN overpaid his tax for 1952 and that his reporting the amount as capital gain and paying taxes on that basis, did not impede the Government in the collection of income taxes.

In determining whether the $264,000 was a gift, you may consider Klein's statement, on the one hand, that ALPRIN owned no stock in Tivoli and, therefore, could not have received a liquidating dividend; and on the other hand, that ALPRIN performed no services worth anywhere near $264,000 and that the payment was "pretty near a gift".

DEFENDANT ALPRIN'S REQUEST NO. S-17 — Granted As Amended

When a corporation goes out of business and gives up its legal existence, its remaining funds are divided among its stockholders in what is referred to as a "liquidating

dividend". A liquidating dividend is a payment to the stockholder in exchange for the stock he holds in the corporation. The gain or loss to the stockholder, that is, the difference between what the stock cost him and what he was paid in exchange for it, is treated for tax purposes as a capital gain or loss rather than as an ordinary income item.

26 USC (Internal Revenue Code of 1939) Sec. 115 (c); 117 (a)

CCH, Income Tax Regulations 118, Sec. 115 (c)-1, (a); 117 (a)-1, (a)

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DEFENDANT ALPRIN'S REQUEST No. S-18

Stock certificates are merely evidence of ownership of a corporation. Failure to receive such stock certificates does not mean that the ownership which the certificates represent did not exist.

11 Fletcher, Corporations p. 55

Commissioner v. *Scatena*, 85 F. 2d 729, 732. (9 Cir., 1936).

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DEFENDANT ALPRIN'S REQUEST No. S-19

In determining which of the three types of payments the drafts represented, you may consider the fact that there are in evidence checks by ALPRIN, ROER and KOERNER, payable to TIVOLI TRADING Co., S. A., representing their investment in that company at the invitation of H. H. KLEIN; that the bank statement of TIVOLI shows that the corporation's account was opened with a deposit of

$2,850.00 which included within it the aforesaid checks of ALPRIN, ROER and KOERNER; that shares of stock were prepared for ALPRIN, ROER and KOERNER, but were not issued by the corporation; that the receipts signed by ALPRIN, ROER and KOERNER, allegedly cancelling their stock subscriptions in TIVOLI, were undated; that the item which closed the TIVOLI account was the purchase of the ALPRIN, ROER and KOERNER drafts.

You may also consider that, although KLEIN said the stock in TIVOLI was owned by himself and I. J. KLEIN, MCLENNAN and NORGAN, no TIVOLI stock was ever issued to the latter three.

H. H. KLEIN held all the TIVOLI stock in his name, although he owned only one-fourth of such stock.

DEFENDANT ALPRIN'S REQUEST NO. S-20 **Denied**

The Tivoli books (Government 380) have been received only as to the defendant KLEIN. It has not been received as to the defendant ALPRIN.

> "Now, while we know that certain checks were drawn the proceeds of which ultimately found themselves into certain resting places, and while we know that these three checks aggregate that figure, and while we know that the ultimate beneficiaries of those three checks were . . . Koerner and Alprin and Roer, you must understand that the mere fact that those moneys are characterized in that book in a certain way (to-wit: as "accrued commissions and expenses"), is not to be received as against the defendant ALPRIN."

Judge Sugarman in *United States* v. ***Klein, et al.***, S. M. 4815-4816.

Granted as Amended

DEFENDANT ALPRIN'S REQUEST NO. S-21

If you find that the Alprin, Koerner and Roer drafts represented the [conditional]* payment to them of their share in the liquidation of Tivoli Trading Co., S. A., then you may not find that Alprin's testimony [to that effect]* before Special Agents Victory and McCarthy was an act in furtherance of the alleged conspiracy.

Denied—Except as Adequately Covered in Other Language in the Charge

DEFENDANT ALPRIN'S REQUEST NO. S-22

In determining whether there was an agreement among the defendants—a unity of design and purpose—you should consider these facts: That Klein says the Tivoli bank drafts to ALPRIN, ROER and KOERNER represent bonuses, while ALPRIN, ROER and KOERNER describe them as liquidating dividends. You should take into account that these two versions are inconsistent with each other. It is for you to decide whether such inconsistencies could have been part of the agreement which is essential to proof of conspiracy.

Denied—Except as Adequately Covered in Other Language in the Charge

DEFENDANT ALPRIN'S REQUEST NO. S-23

You are instructed that it is not unlawful to conspire to do that which is not prohibited. If something is not prohibited by statute, then it is by implication recognized that it may be lawfully done without interfering with or defrauding the United States. Thus, if the defendant

*Words in brackets added by the court.

Defendant Alprin's Supplemental Requests to Charge (1)

ALPRIN, in not reporting to Internal Revenue until 1952, the receipt of the $264,000-odd, did only that which the law allowed, then the failure to report it in prior years can be no part of a conspiracy to defraud the United States.

United States v. *Bigg[illegible]*, 2[illegible] U. S. 507, 517 (1909)

Fain v. *United States*, 209 Fed. 525, 531 (8 Cir., 1913)

United States v. *Atlantic Journal Co.*, 185 Fed. 656, 662 (C. Ct. Ga. 1911)

DEFENDANT ALPRIN'S REQUEST NO. S-24

Denied—Except As Adequately Covered in Other Language in the Charge

The test of the taxability of income in a given year is whether it is made unconditionally available to the taxpayer in that year. If he has the right and the unrestricted opportunity to do what he wishes with the income—if he is free to enjoy it at his own option—then it is taxable to him. But the converse is also true. If its availability to him is conditioned or restricted, whether orally or in writing, he is under no obligation to report it until such condition or restriction is terminated.

Based on *Hedrick* v. *Commissioner*, 154 F. 2d 90, 91 (2 Cir., 1946).

Corliss v. *Bowers*, 281 U. S. 376, 378 (1930).

Fischer v. *Commissioner*, 14 T. C. 792, 801-2 (1950).

Internal Revenue Regs., 118, sec. 39.42-2.

You are instructed that if you believe that the defendant ALPRIN received his bank draft from Tivoli, through Klein,

subject to a restriction as to its use, and therefore, did not have the funds under his dominion and control and could not use the funds as he wished because of the restriction, then you must find that it was not income taxable to him for as long as such restriction continued. If you find that the restriction on use continued from 1947 to 1952, then, during each of those years, there was no obligation on his part to deposit the draft in a bank or to report the receipt of the draft in his income tax return. If you so find, then ALPRIN's failure to report the bank draft as income could not be part of a conspiracy to defraud the United States in the exercise of its tax collection function.

Based on *Curley* v. *United States,* 130 Fed. 1, 11 (1 Cir., 1904)

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DEFENDANT ALPRIN'S REQUEST NO. S-25

In considering whether ALPRIN had an obligation to report his draft prior to 1952, you may take into account that he left the funds it represented intact; that he did not invest them and that he earned no interest on them. If you conclude from these and other facts that he did not have complete freedom to use the funds, then there was nothing wrongful in his not reporting them as income.

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DEFENDANT ALPRIN'S REQUEST NO. S-26

If you find from the evidence in this case that the defendant KLEIN, as an officer of Tivoli, restricted the use of ALPRIN'S, KOERNER'S and ROER'S drafts for an unlaw-

ful purpose, acting in conjunction with the three Canadians, ROSENBERG and ROKOFF, or acting alone, and that such unlawful purpose was unknown to the defendant ALPRIN, then you must acquit the defendant ALPRIN.

DEFENDANT ALPRIN'S REQUEST NO. S-27

Denied—Except As Adequately Covered in Other Language in the Charge

Before you may find the defendants, or any one of them, guilty, you must find beyond a reasonable doubt that they, or he, acted willfully and knowingly in conspiring to defraud the United States. That is, that they acted with an evil state of mind, without justifiable excuse, without ground for believing their conduct was lawful.

United States v. *Murdock*, 290 U. S. 389, 394-5 (1933)

Morrisette v. *United States*, 342 U. S. 246, 264 (1952).

DEFENDANT ALPRIN'S REQUEST NO. S-28

Denied—Except As Adequately Covered in Other Language in the Charge

In reporting his bank draft for Tivoli as capital gain in 1952, and in not reporting it in prior years, the defendant ALPRIN was entitled to act in good faith upon the advice of his tax counsel, whether or not such advice was correct as a matter of law.

United States v. *Phillips*, 217 F. 2d 435, 440 (7 Cir., 1954)

Haywood Lumber & Mining Co. v. *Commissioner*, 178 F. 2d 769, 771 (2 Cir., 1950)

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DEFENDANT ALPRIN'S REQUEST NO. S-29

A taxpayer has the legal right to decrease the amount of what otherwise would be his taxes, or altogether to avoid them by means which the law permits.

Gregory v. *Helvering,* 293 U. S. 465, 469.
United States v. *Raub,* 177 F. 2d 312, 315 (7 Cir., 1949)

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DEFENDANT ALPRIN'S REQUEST NO. S-30

In view of the complexity of tax laws, many thousands of taxpayers innocently file inaccurate tax returns. There is no presumption that may be drawn from the filing of returns that do not fully reflect the tax liability of the defendants. In order to be criminal, it must be done wilfully and intentionally. This intent must be established by the Government by independent proof either direct or circumstantial. If the Government has failed to establish this intent beyond a reasonable doubt, you must acquit the defendants.

Adapted from *Lurding* v. *United States,* 6 Cir. 179 F 2d, 419, 422; and
Hargrove v. *United States,* 5th Cir. 67 F 2d 820

DEFENDANT ALPRIN'S REQUEST NO. S-31

It is the right as well as the interest of the taxpayer to limit his admission of liability for tax to the amount he

actually owes. But the law is complicated, accounting treatment of various items raises problems of great complexity, and innocent errors are numerous, as appears from the number who make overpayments. It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care. Such errors are corrected by the assessment of the deficiency of tax and its collection, with interest for the delay.

Spies v. *United States*, 317 U. S. 492, 496 (1943)

You should consider the testimony which was offered as to the reputation of (the defendants) DENNIS ALPRIN for honesty and integrity. This testimony of the good character of a defendant, ~~the defendant~~, ~~ALPRIN~~, together with all the other facts in the record, should be considered in determing the guilt or the innocence of (each defendant) ~~ALPRIN~~. ~~This evidence of good character may, in itself, create a reasonable doubt in your mind sufficient to justify acquittal, and this is so even where, without such evidence, no reasonable doubt would exist.~~

Michelson v. United States, 335 U.S. 469, 476 (1948)

Kreiner v. United States, 11 F.2d 722, 726 (2nd Cir. 1926)

Mannix v. United States, 140 F.2d 250, 253 (4th Cir. 1944)

Edgington v. United States, 164 U.S. 361, 366 (1896)

Defendant Alprin's Supplemental Requests to Charge (I)

DEFENDANT ALPRIN'S REQUEST NO. S-33

Denied Except As Adequately Covered in Other Language in the Charge

In determining whether the defendant ALPRIN wilfully and knowingly conspired to defraud the United States, you may take into account that he testified at length before Special Agents, MCCARTHY and VICTORY of the Treasury Department and offered them access to his files; that Special Agent, MCCARTHY referred to him as a "very cooperative witness"; and that he testified to Mr. Siegel of the Tax Division of the Department of Justice. You may also take into account the fact that the Justice Department decided not to prosecute him for his individual tax liability for the year 1947—the year when he received the bank draft from Tivoli and did not report it.

Colloquy

[8776] New York, August 15, 1955,
2.15 o'clock p. m.

* * *

The Court: Now, gentlemen, out of an abundance of caution, I don't know whether we have heretofore done this on the record and, as I say, out of an abundance of caution, in the event that we have not, we should have some stipulation that what we refer to as the fifth count—and we have all more or less fallen into the habit of convenience—is intended to mean the second count of the superseding indictment, of the second indict- [8777] ment, and the clerk was very much concerned because they have been treating this matter as the first indictment of a number of counts, and then the second indictment of two counts, the first indictment having five, the second indictment having two, and the two of the second substituting for the fourth and fifth of the first. But we have gotten into the habit of speaking of the fifth count, and for purposes of convenience and for an understandable reason.

However, I want to know now whether the Government will so stipulate, i.e., that reference to the fifth count is intended to refer to the second count of the second indictment?

Mr. Bauman: I so stipulate and state for the record that I have referred to that count, the second count of the two-count indictment, as the fifth count throughout the trial.

The Court: Yes, and is that agreeable to defense counsel?

Mr. Kiendl: Entirely.

Mr. Bender: So it is, your Honor.

Mr. Donohue: Yes, your Honor.

The Court: All right.

Now we get to the rulings on your requests [8778] to charge.

It is going to be a little inconvenient for the defendants because they will have to bunch together in consulting the marked requests which I now return to them.

You will recall, gentlemen, that you supplied me in each instance with your requests to charge in triplicate. Those have resulted in three complete sets upon which rulings have been made, one set retained by the Court, one for the Government, and one for defense counsel, and so I now hand to the Government a complete set of the Government's requests and the defendants' requests.

We will discuss them in a moment.

And I hand to the defendants—and they will have to do the best they can about working together on these—also a complete set of all of the defendants' requests and the Government's requests and the rulings thereon.

Now you will notice, gentlemen, if we take, for example, Government requests to charge, the original 1 to 41, with some deleted as a result of the dismissal of the first four counts—you will probably find that the Government's requests are [8779] on the top in that batch—you will notice that at each request there is pasted on the requests a legend in

the sets that I returned to you on green paper indicating one of four things: either that the request was granted—and what I am telling you now applies to every request by every party—or granted as amended, or denied, or denied except as adequately covered in other language in the charge.

Now I should like to explain to you just what these legends mean.

[8780] This is a technique that I practice generally on my own. I don't know if any other judge does, but I think it is the proper way, particularly in view of the fact that you are required under the rule to note your exception, and if you fail to do so you lose your right to it. It isn't like merely making an objection and having it continue throughout the trial. You are specifically required by the rule to except to any action that dissatisfies you in the Court's rulings as to requests.

For example, referring to Government's Request No. 1, that request is granted, and that means that language exactly as requested has been incorporated in the charge.

Returning, for example, to Government's Request No. 2, that was granted as amended, and there is indicated by interlineation on your copy that in the next-to-the-last line there has been inserted the phrase "intended to convey." Otherwise, that has been granted as amended. Is that clear?

If you will turn, for example, to Government's Request 13, where the amendment became so voluminous as to make it almost impossible to inter- [8781]

lineate or where there was a change of language, what I have done in those that were granted as amended was to superimpose on the page, but in such a way that you could still see the original request, the amendment in toto. Is that clear?

Of course if you turn to Government's Request No. 19, which follows 13, the intervening ones having been deleted, that gives you an example of another category, denied except as adequately covered in other language in the charge.

Now with respect to that treatment of a request, gentlemen, various factors come into play. Number one, as may well be understood particularly vis-a-vis the defendants, there were many instances where each defendant asked for practically the same charge in slightly altered language. Now it would be ridiculous for me, as much as I lean toward giving as close as I can the language requested, it would be ridiculous for me to repeat that. So where it is marked denied except as adequately covered in other language in the charge, it means precisely that.

Now we will discuss in a moment what technique you gentlemen of the defense are to employ [8782] with respect to saving your rights under these denials. There are other situations which are best pointed up, for example, by Government's Supplemental 34, which is in the third volume of the Government's requests. Government's 34-A through -O is the counterpart in general aspect, for example, as Defendant Haas' 33-A through 45. Those were the supplements. What happened there was this. We

got to a point where charges were requested on specific isolated bits of evidence. Those were all, for example, Government's 34-A through -O and Defendant Haas' 33, but it should be 33-A, because 33 is the last numbered request in the previous requests of Haas, so I took the liberty of marking the first one in the second set as 33-A—do you follow me on that, Mr. Bender?

Mr. Bender: Yes, sir.

The Court: What is the last one on your previous requests?

Mr. Bender: 33.

The Court: So I have marked the first in your supplement as 33-A. I am pointing out now that 33-A through 45 were all denied, just as Government's 34-A through -O were all denied, because of one of two [8783] reasons, or possibly both: either they had already been covered in other language in a general way, and these requests which incidentally came at the tail end of all the requests had defined themselves down to asking me to charge on specific small bits of evidence, and if I were to have granted those requests I would have had a charge that would take me two days to read. So, as a matter of necessity, if I was satisfied that I had already covered the substance of what was requested even in a general way, that request was denied, except as adequately covered in other language in the charge. Of course, finally, there is the category of denied outright, and that is because either the request was not borne out by the evidence or it was contrary to the law as I understood it.

[8784] Now that poses this problem, and this is the problem, of course, I take it, that affects the defendants only.

The defendants have the right and the duty to take exception. They have the right to take exception to any charge requested by the Government, which I grant. They have the right to take exception to any charge requested by the Government which I grant as amended, and they have the right to take exception to any charge requested by the Government which I deny, except as otherwise adequately covered in other language, because that legend means that either all or a part of the Government's request has been granted, i.e., the part otherwise adequately covered.

So much for the defendants' rights to except as to the Government's requests.

Now we come to the defendants' rights to except as to their own requests. Obviously they don't except to anything that was granted. Obviously they should except to anything that was denied. But I think also they should be put on notice that they might want to except to something granted as amended because the amendment may do violence to the thought [8785] that they requested.

And then we come to another very difficult problem for defense counsel, and that is this: When I say "Denied except as otherwise adequately covered by other language in the charge," you haven't seen the charge, and you won't see it until it is given. Now I don't expect you to take my word for it that

I have otherwise adequately covered what you have requested and I have denied. I may be completely wrong about it, but if I am, I assure you, it is a mistake; it isn't deliberate. But you must save your rights nevertheless.

Now I thought the appropriate way to do it would be for each defendant to place, and the Court will receive now, at the outset, a blanket exception to any request by a defendant not granted, and I think that will cover your rights in every situation, and also a blanket exception to every request by the Government as granted or granted as amended, or as denied except as otherwise covered in so far as the otherwise covered portion constitutes granting a portion of the Government's request.

Now I think, gentlemen, that I have placed on [8786] the record your exception that will preserve and protect your rights in every contingency.

Now, of course, that will obviate the necessity of your getting up and placing on the record an exception to each request as we go through them.

Mr. Goldstein: Your Honor, I think you left out possible objections to co-defendants.

The Court: Oh, yes. Yes, indeed. And I did not touch upon that. Thank you for reminding me that each defendant has also the right to take exception to any charge of a co-defendant granted or granted as amended, or in so far as one is denied except as otherwise adequately covered by other language, that portion which purportedly is other-

wise covered by other language, and each defendant is also at the outset given a blanket exception as to each other defendant's requests so treated.

Now have I covered every contingency?

Mr. Kiendl: If your Honor please, that is tantamount to granting the defendants blanket exceptions to every possible adverse ruling of the Court.

The Court: And that is precisely what I [8787] intended to do.

Mr. Kiendl: That is all we can ask for.

The Court: All right.

The problem posed is this, that unless I were to specifically read into the record each request and a disposition thereof and the amendment thereof, I have in my own mind doubt as to, in the event this ever did invite the attention of a higher court, how the specific matter would be before the Court, and so I thought that possibly the best way to do it would be to introduce as an exhibit, even a Court's exhibit, marked as such, the Court's rulings on the requests to charge, and it will be deemed therefore that there will be received in evidence Court's rulings on the requests by the Government and the several defendants to charge.

(Deemed marked Court's Exhibit 1.)

The Court: Now, then, we will just go through them starting with Government's 1.

Mr. Bender: What will that be, Court's Exhibit No. 1, or will it be separate numbers or what?

Rulings on Requests to Charge

The Court: I think we can introduce them all as one, one exhibit, Court's Exhibit No. 1, [8788] because I will review them in the record, not in detail, but enough to identify them.

Now Government's request No. 1 was granted.

Government's request No. 2 was granted as amended, and the amendment appropriately indicated.

Now, gentlemen, if at any stage you want to interrupt to ask any questions, although I will not hear argument on these, I will be happy to answer any questions that you may be prompted to ask, and, of course, that goes for the Government, too.

Government's request No. 3 is granted.

Government's request No. 4 is denied except as adequately covered in other language in the charge.

Government's request No. 5 is granted as amended and the amendment is appropriately shown.

Mr. Kiendl: Your Honor, could you give us enough time to take care of these slight changes?

The Court: Surely.

Mr. Kiendl: Thank you, your Honor.

The Court: Of course, you know, gentlemen, that those marked copies that I returned to you you are going to retain. They are your copies.

Mr. Kiendl: We have three defendants.

[8789] The Court: But you have to distribute the copy among the defendants, you will have to allow them a chance to conform.

Mr. Bender: We can do that after, your Honor.

The Court: Yes.

Now Government's request No. 6 is granted.

As is No. 7.

Government's request 8 is denied except as adequately covered in other language in the charge.

Government's request No. 9 is granted as amended.

10 is granted as amended.

11 is granted as amended.

12 is denied except as adequately covered in other language in the charge.

Now 13 is granted as amended, but the amendment there involves substantial changes and so it was completely recast.

Now there is no Government's request 14, 15, 16, 17 or 18.

Mr. Bauman: That is correct, your Honor.

The Court: All right.

Government's request 19 is denied except as [8790] adequately covered in other language in the charge.

Government's request No. 20 is granted as amended—there is a slight amendment there making plural of circumstance to circumstances.

Government's request No. 30 is granted as amended and the amendments are indicated.

Government's request 31—there is no Government's request 31.

Now just a moment. I neglected to place on the record the fact that there is no Government's request 21, 22, 23, 24, 25, 26, 27, 28 or 29.

Mr. Bauman: May my silence be deemed as assent in this?

The Court: Yes. I understand these were extracted because of the dismissal of the first four counts.

Mr. Bauman: That is exactly right, your Honor.

The Court: In view of the fact that this is going to be an exhibit, at least in so far as the Government's requests are concerned, I want the record to show just what numbers were before me.

Mr. Bauman: Yes.

The Court: I have already indicated what [8791] was done with No. 30. I now indicate that there was no Government's 31.

Government's 32 is denied except as adequately covered in other language in the charge.

Government's 33 is granted as amended, and that was substantially amended.

Government's 34 is granted as amended.

35 is denied except as adequately covered in other language in the charge.

36 is granted as amended.

37 is denied except as adequately covered in other language in the charge.

Government's 38 is granted.

There is no Government's 39 or 40.

Government's 41 is granted as amended.

And that constitutes my rulings on the original requests by the Government, and we now come to the Government's supplemental requests.

Government's S-I, as indicated, is granted as amended.

S-II is granted as amended.

S-III is granted.

S-IV is denied except as adequately covered in other language in the charge.

[8792] Similar disposition is made of S-V and S-VI.

Government's S-VII is granted.

Government's S-VIII is granted.

Government's S-IX is granted as amended.

Government's S-X is granted;

As is XI.

Government's S-XII is denied except as adequately covered in other language in the charge.

Government's S-XIII is granted.

XIV is denied except as adequately covered in other language in the charge, similar disposition being made of Government's S-XV.

And that disposes of the first supplemental requests by the Government, and we now come to the second supplemental requests.

Now, Government's S-XVI, XVII, XVIII, XIX and XX, appearing as they did in the objections to Klein's requests, respectively, 3, 5, 7, 9 and 12, are all denied except as adequately covered in other language in the charge.

Government's S-XXI, which appeared in its objections to Klein's request 27 is granted, and Government's S-XXII, which appeared in its objections [8793] to Klein's request S-12 is denied except as adequately covered in other language in the charge.

Government's S-XXIII is granted as amended.

Government's S-XXIV is granted.

Government's S-XXV was substantially amended and granted as amended.

Government's S-XXVI was denied except as adequately covered in other language in the charge, and the same disposition was made of Government's S-XXVII.

Government's S-XXVIII was granted.

Government's S-XXIX was granted as amended.

Government's S-XXX was denied.

Government's S-XXXI was denied except as adequately covered in other language in the charge.

Government's S-XXXII was similarly denied except as adequately covered in other language in the charge.

Government's S-XXXIII is granted.

Government's S-XXXIV(a) through (o) was denied except as adequately covered in other language in the charge.

Government's S-XXXV was granted.

Government's S-XXXVI denied except as [8794] adequately covered in other language in the charge.

Similar ruling on S-XXXVII, S-XXXVIII, S-XXXIX, XL.

And Government's S-XLI is denied.

And that completes the Court's rulings on the Government's requests to charge.

Now before I go any further, I doubt whether there is, but I am prompted to ask whether any defendant wishes to note anything on the record in connection with the Court's disposition of the Government's requests.

I think everything that you could possibly note has already been noted.

All right. Now we come to the requests by the defendant Klein, and here the same technique was employed: each request was appropriately marked as to what disposition was made, if it was amended, the amendments are clearly set forth.

Klein's request 1 granted as amended.

Klein's request 2 granted as amended.

Klein's request 3 granted as amended.

Klein's request 4 granted.

Klein's request 5 granted as amended.

6 granted.

[8794a] 7 granted.

8 granted.

9 granted as amended.

[8795] Ten granted as amended.

Eleven granted.

Twelve granted.

Thirteen granted as amended.

Fourteen granted as amended.

Fifteen denied.

Sixteen denied.

Seventeen granted.

Eighteen granted.

Nineteen denied.

Twenty granted as amended.

Twenty-one granted.

Twenty-two denied, except as adequately covered in other language in the charge.

Twenty-three granted as amended.

Twenty-four granted.

Twenty-five denied.

Twenty-six granted as amended.

Twenty-seven granted as amended.

Twenty-eight denied, except as adequately covered in other language in the charge.

Twenty-nine granted as amended

Thirty granted as amended.

Thirty-one and 32 denied, except as [8796] adequately covered in other language in the charge.

As to Klein's supplemental requests, Supplement I, containing Requests S-1 through S-14;

Klein's Request S-1 granted as amended.

S-2 denied except as adequately covered in other language in the charge.

Similar disposition of S-3, S-4, S-5, S-6 and S-7.

Klein's Request S-8 denied.

S-9 denied, except as adequately covered in other language in the charge.

S-10 and S-11 denied.

Klein's Request S-12, S-13 and S-14 each denied, except as adequately covered by other language in the charge.

Then we come to Klein's Supplemental Requests No. II, containing S-15 through S-23.

Klein's S-15 granted as amended.

S-16 granted.

S-17 denied.

S-18 granted as amended.

S-19 granted as amended.

S-20 denied except as adequately covered in other language in the charge.

[8797] S-21 denied.

S-22 granted as amended and S-23 granted.

Finally, Klein's Supplemental Requests to Charge III, containing Requests S-24 and S-25.

Request S-24 is substantially amended and granted as amended.

S-25 is granted.

That concludes the rulings on defendant Klein's requests, and we now come to defendant Haas's requests to charge, the original being Requests 1 through 33.

No. 1 was withdrawn. Is that correct, Mr. Bender?

Mr. Bender: Correct, your Honor.

The Court: No. 2 denied, except as adequately covered in other language in the charge.

No. 3 granted as amended.

No. 4 denied.

No. 5 denied.

No. 6 denied.

No. 7 denied.

No. 8 denied.

No. 9 denied.

No. 10 granted as amended, with substantial amendments set forth.

[8798] No. 11 denied.

No. 12 granted.

No. 13 granted as amended.

Rulings on Requests to Charge

No. 14 granted.

No. 15 granted as amended.

No. 16 denied.

No. 17 denied.

No. 18 denied.

No. 19 granted as amended.

No. 20 denied, except as adequately covered in other language in the charge.

No. 21 denied.

No. 22 granted.

No. 23 denied, except as adequately covered in other language in the charge.

No. 24 granted as amended.

No. 25 granted as amended.

No. 26 granted as amended.

No. 27 granted as amended.

No. 28 granted.

No. 29 denied, except as adequately covered in other language in the charge.

No. 30 granted as amended.

No. 31 granted as amended.

[8799] No. 32 denied, except as adequately covered in other language in the charge.

No. 33 granted as amended.

That brings us to Haas's supplemental requests to charge, the first of which was originally 33 but which is now known as 33-A. This batch of supplemental requests run from 33-A as renumbered, through 45, all of which are denied except as adequately covered in other language in the charge.

That brings us to the requests of the remaining defendant, Alprin. His original requests were Nos. 1 through 32.

No. 1 granted as amended.

No. 2 granted as amended.

No. 3 granted as amended.

No. 4 granted.

No. 5 granted as amended.

No. 6 granted as amended.

No. 7 granted.

No. 8 granted as amended.

No. 9 granted as amended.

No. 10 granted.

No. 11 granted as amended.

No. 12 denied, except as adequately covered [8800] in other language in the charge.

Similar disposition of No. 13.

No. 14 granted.

No. 15 granted.

No. 16 granted as amended.

No. 17 granted as amended.

No. 18 granted as amended.

No. 19 granted as amended.

No. 20 granted.

No. 21 granted as amended.

No. 22 granted as amended.

No. 23 granted as amended.

No. 24 granted as amended.

No. 25 granted as amended.

No. 26 granted.

No. 27 granted as amended.

Rulings on Requests to Charge

No. 28 granted as amended.

No. 29 granted as amended.

No. 30 granted.

No. 31 denied, except as adequately covered in other language in the charge.

Similar disposition is made of No. 32.

That brings us finally to Alprin's supplemental requests to charge I, containing requests S-1 through [8801] S-33.

S-1 is denied, except as adequately covered in other language in the charge.

Similar disposition is made of S-2.

S-3 is denied.

S-4 denied, except as adequately covered in other language in the charge.

S-5 granted as amended.

S-6 denied, except as adequately covered in other language in the charge.

Similar disposition was made of S-7.

S-8 denied.

S-9 denied.

S-10 denied.

S-11 denied.

S-12 denied.

S-13 denied.

S-14 denied.

S-15 denied.

S-16 denied.

S-17 granted as amended.

S-18 granted.

S-19 denied, except as adequately covered in other language in the charge.

[8802] S-20 denied.

S-21 granted as amended.

S-22 denied, except as adequately covered in other language in the charge.

Similar disposition is made of S-23.

Similar disposition is made of S-24.

Similar disposition is made of S-25.

Similar disposition is made of S-26.

Similar disposition is made of S-27.

Similar disposition of S-28.

Similar disposition of S-29.

Similar disposition of S-30.

Alprin's S-31 was granted.

S-32 granted as amended.

S-33 denied, except as adequately covered in other language in the charge.

That of course covers the rulings on the requests to charge. I think the combination of the exhibit and the references in the record place completely on the record all dispositions made by the Cou of all requests.

* * *

[8804] The Court: Yes. Well, of course, one invited the other, you know. One begat the other.

Well, then, the ruling on Government's request No. 10 is now changed from granted as amended to denied.

Now you said that there was one supplemental charge that fell in the same category. Will you [8805] give me the number, please?

Mr. Carmichael: The Government's S-IX, if your Honor please.

The Court: S-IX? Well, my own notes would indicate the same as Government's 10. I had already marked that down. So the disposition that was originally made of 10 was carried over to S-IX but on the basis thereof, Government's S-IX now is also denied.

Mr. Bauman: May I state we have no objection to the denial of Government's S-IX.

The Court: It is almost the same language, if not exactly the same language as Government's 10.

Mr. Bender: Actually it is being withdrawn, isn't it? The Government is withdrawing its request?

The Court: No. Mr. Carmichael said they are not withdrawing it but the Court has indicated the doubt they have cast has been sufficient, now added to the Court's own doubt, that the Court denies it and it will not appear in the charge.

Mr. Kiendl, that is Government's 10 and Government's S-IX, which are almost identical.

[8806] Now, is there anything else to invite our attention?

Mr. Donohue: I am advised, your Honor, that there is a real problem posed for us with respect to your Honor's denial except as charged otherwise in other language.

Would your Honor hear Mr. Goldstein's suggestion? He gave me a thought which I think is important.

The Court: Yes.

Mr. Goldstein: It is this problem, your Honor: We submitted a series of instructions, for example, patterned along the suggestions in the Kotteakos case on the theory of more than one conspiracy.

Now in Mr. Donohue's argument to the jury, it seems to me that it will be necessary for him to know whether or not your Honor is going to charge the jury on one conspiracy or more than one conspiracy.

The Court: I am not charging the jury on more than one conspiracy. In other words, I am not saying to the jury that there was only one conspiracy. I am not saying to the jury that there was more than one conspiracy. But throughout [8807] the charge I am speaking of a conspiracy, and, of course, I don't recognize the hub and the spoke situation other than that in this case. To me this is all one conspiracy, but I am not going so far as to tell the jury that as a matter of law, which I think would be completely wrong. If they in their deliberations come up with the idea that there are separate conspiracies, it is their business. That is the reason why I denied that series of requests, because in my view, there was either one conspiracy here or none, not a series of conspiracies.

I don't recognize in the testimony, as I view it—and, of course, I would never, under any circumstances transport that thinking to the jury, but as I see it there wasn't a conspiracy Klein vis-a-vis Alprin, and another one Klein vis-a-vis Roer, and another one Klein vis-a-vis Haas, or Klein vis-a-vis Koerner. I don't see it that way.

I see either one conspiracy or none at all, and that is the way I am framing my charge.

Of course, if I am wrong, you have been adequately protected in that your exception is noted.

I do recognize the fact that that may pose [8808] a problem as to how you are going to frame your summation, and, of course, the spirit, if not the letter of the rule, the federal rule on rulings on requests contemplates that the rulings be made before summation so that counsel will not transgress.

Now to that extent all I can tell you gentlemen is that I am charging about a conspiracy, if any, and there isn't a word in the entire of my charge that talks about a number of conspiracies or breaks the conspiracy down into separate conspiracies.

[8809] Mr. Goldstein: There is another problem, your Honor. There is a series of our instructions which you said were denied except as covered elsewhere, and they had to do largely with the law regarding the holding of checks and the taxability of that.

Now since we have no idea of what is covered elsewhere and what is said elsewhere it is rather difficult for us to gauge what the summations should assume [illegible] the law on that subject.

The Court: Would you be good enough to point out [illegible] specific request that you refer to? I may be able to give you a lead on that.

Mr. Goldstein: The best example, because it is the most complete on that, is S-24.

The Court: I am saying nothing in my charge about the year on which taxes are due under these drafts. As a matter of fact, I have a recollection

that there was the request that I instruct, and I granted it, that these defendants are not being tried for failure to pay income tax of any sort on the drafts when they actually got the funds.

Somebody requested that.

Mr. Bender: I think I did, your Honor.

[8810] Mr. Goldstein: May I have a moment to confer, your Honor?

The Court: Surely. You see, when you got into these supplemental requests you were down to a stage, and that was true of everybody, they finally got to a stage of refinement where isolated bits of evidence were torn out, and I was asked to charge what they could do with a specific bit of evidence.

I approached this in my charge from an entirely different point of view, more from a general point of view, that a succesion of things, the drafts plus the $8 million going to Canada plus this, plus that, taking all these things together they might very well come to a conclusion that there was a conspiracy, but I wasn't going to get to the stage where I would take just little segments of evidence, so I denied your requests on that; I denied Mr. Bender's requests on that; I denied the Government's requests on that because otherwise I was skirting dangerously on the point of telling the triers of the fact how to find, but of more importance to me was the fact that I was getting to a size of a charge that was so unwieldy that I just had to put on the brakes.

[8811] So where you requested charges which in and of themselves may be perfectly proper—don't

misunderstand me, they may be perfectly proper, but within the periphery of a reasonable size to a charge—after all, this was a complex case—I just had to deny some of them.

Now of course I believe—not that everything you requested, for example, in Alprin's S-24 is actually covered in other language in the charge; I wouldn't want to leave that notion with you.

Mr. Goldstein: No, I gather that there is no reference——

The Court: Some part of it may be, but the general subject has been covered generally either in some language of the Court or some language taken from another request.

Mr. Goldstein: Specifically, your Honor, is there any reference in your charge to the effect of a restriction on income to the obligation to report it taxwise?

The Court: No. The only reference, as I recall it, in my charge to any restrictions is what inference they might draw from the fact that three men held a quarter of a million dollars, one for two years [8812] and the other for four years.

Mr. Goldstein: You see the problem, as we envisage it, your Honor, particularly on this aspect, is that if there was a restriction or if the jury believes there was a restriction, and if Mr. Alprin was not a conspirator to the development of the restriction, then his holding was a lawful holding and there was no impeding because he had no obligation to the

Government to do anything about it, and without telling the jury that the law is that a restriction on money renders it non-taxable and non-reportable, it seems to me that merely giving them the question of the inference to be drawn from it——

The Court: That is all I think is in this case, and I am telling them that the income tax liability of any one of the ultimate recipients of these drafts is not before them; that the only purpose that they can consider the holding for these periods of time is for what inferences they may draw from them.

Mr. Goldstein: I don't have it in mind, your Honor, from the point of view of income tax liability, but from the point of view of obligation to call these moneys to the attention of the Government.

[8813] The Court: I do have in my charge a recital of the fact that there is no obligation on the part of any person to go running to the Government with uncalled for disclosures, that the obligation is that once the Government comes in and says, "We want to know," then you have got to tell, but I have a very definite paragraph in there that there is no obligation for anybody to go running to the Government and tattling on himself, so to speak.

Mr. Goldstein: All right, your Honor. We merely wanted guidance.

The Court: That is definitely in the charge.

Mr. Goldstein: Thank you.

Mr. Bender: May I ask one further question, your Honor, in view of what developed after the

cross-examination, after we had submitted the requests.

A question was raised by Mr. Bauman on cross-examination, for example, of Mr. Haas, as to what would be the effect of an assessment.

You may recall that Mr. Bauman indicated that after the jeopardy assessment didn't Mr. Haas—and impliedly Mr. Klein—know that the Bureau then was trying to determine the tax liability of Mr. Klein or the others in connection with the Harwood venture.

[8814] Now of course it was already too late by that time to have gotten in any kind of request to charge as to whether or not when an assessment is levied by the Bureau of Internal Revenue doesn't that mean something statutorily, and doesn't it mean, for example, that there was a fixed determination by the Bureau of Internal Revenue as to what the tax liability was, and that thereafter the function of the Treasury Department would be to try to collect it?

The inference that was left in the cross-examination, you see, was that even after an assessment is filed by the Government, the Government would still be trying to determine the tax liability, so that if questions were put to Mr. Klein, for example, as in the interrogatories, that he should know even after an assessment has been rendered that the Government is still looking to determine what his true tax liability is, it seems to me that it might be proper, even though it goes beyond your Honor's dateline for

requests, that we consider the advisability of telling this jury just what an assessment means and what it does not mean.

The Court: I am not going to delve into specifics to any greater extent than I have, because [8815] if I do that, then I just let the bars down and I would have to grant every one of these requests by the Government and yourself and your co-defendant counsel on these isolated specific issues of fact and I am just not going to do it. It is impossible.

My charge now, Mr. Bender, is close onto fifty pages of legal cap, and you know it is hard to write something short. It is much easier to write something long, and I have tried to adhere to your language wherever possible.

You will notice that many of the changes are only editorial changes or to tie them in with a prior thought, but I believe that if you give me a request and even though I may feel that my way of stating that particular proposition is a better way, I discard my own and I take yours because I feel after all the defendant is entitled as near as may be to have the charge given in the language that he requested and I have really done whatever I possibly could to adhere to that here.

[8816] I have to keep the charge within bounds.

I don't recognize any such danger that will warrant my going into any explanation to this jury as to what a jeopardy assessment is. I think they know it is a bill from the Government that the Government thinks you owe a certain amount of tax.

I don't think there has ever been a case in the whole history of the Treasury Department—I know there never was when I was with the City Excise Bureau—where a tax was ultimately paid in the exact amount of the jeopardy assessment.

I don't know how the Government figures out their jeopardy assessments, but I do know how the City does. The auditor closes his eyes and reaches out into empty space and pulls out a figure and writes it down. If it is $374,000, that is the assessment. That is just the way they do it.

Mr. Bender: It is the same way here, your Honor.

Mr. Kiendl: We will have something to say about that in our summation, your Honor.

The Court: Is there anything further to say before we adjourn until 1.15 tomorrow? If not, we are so adjourned.

(Adjourned to August 16, 1955 at 1:15 p. m.)

* * *

[9081] Mr. Bauman: May it please the Court, Mr. Kiendl, Mr. Bender, Mr. Donohue, Mr. Foreman, ladies [9082] and gentlemen:

Now, after listening for a day and a half to the summations of my adversaries, it is my time to explain this case to you as I see it.

Before I do that, I want to set your minds straight about something that I think you should know.

(At this point the defendant Haas entered the court room.)

Mr. Bauman: (Continuing) No one forced me to try this case. No one forced my partners, Tyler, De Franco, Riordan, Donohue, Carmichael, and all the rest that were named for you several times by my adversaries, no one forced them to work on this case. And I want you to know that far from being forced to work on it, I know I speak for my partners and myself when I say to you that every one of us is proud to have been selected by the Department of Justice to work on it.

We put the very best of what limited talents we have into the preparation and presentation of this case.

The Government will ask you to find each defendant guilty on the facts of this case, and it is [9083] too bad that none of my adversaries saw fit to relate to you chronologically and in an ordered attempt to explain the facts to you, the facts as they actually occurred.

I shall attempt to do that because I think that it is only in that way that you can understand the facts of the case and the reason that the Government will ask you to find each of the defendants guilty.

[9084] I won't talk to you for half of my summation time about the facts of a case that is no longer before you, because if I did that, it could only serve one purpose, and that would be to confuse you and divert you from the facts of the case which we are now trying. Nor shall I attempt to tell you what the Court is going to charge, bit by

bit, because on Monday his Honor will explain the law to you, and as I indicated when I questioned you as jurors, you will take your law from the Court, and each of you agreed with me that you would accept the instructions on the law from the Court and not from me, not from defense counsel, so I shall not read an excerpt of a charge here and an excerpt of a charge there, because on Monday the Government would like that you receive your instructions on the law from the person who has the responsibility of instructing you in the law, and that is not my responsibility.

I think I must say the first four counts are gone.

You have heard that often enough in the last day and a half. They are not before you any more.

The reason that I am talking to you, and [9085] expect to talk to you for quite a while is because the fifth count is before you, and it is that count, that charge, upon which you will make your determination.

The last of the things that I am not going to do is to summarize the indictment for you, because I believe the judge will explain to you, in his charge, the charge against the defendants, and take it the way the judge tells it to you, because I believe that he will instruct you in that, and as an adversary in this proceeding I feel that it should come from the bench.

But you do know that the basis of the charge is that the defendants conspired with others named to impede the Government in the collection of revenues.

And I think that I am being fair when I say that the question you will ultimately have to decide is, did these defendants or any of them or all of them conspire, agree to impede the Treasury Department in the collection of revenue.

Now in determining whether or not these defendants are guilty, there is a limited amount of background evidence to which you heard reference made that I would like to discuss with you. And [9086] the reason that I want to discuss it with you is that when we come to a discussion of the facts upon which the Government relies, and when we come to a discussion of the conspiracy, you are entitled, I think, to read, and you should read that conspiracy and the acts of the various individuals against the background which preceded the actual formation of the conspiracy.

Now there is no question in this case that there were two pieces of paper signed by representatives of Agencias Destiladores, one of them on April the 18th and one on April the 20th, with relation to the Harwood Whiskey situation, and there is no question that Hyman Harvey Klein, Morris O. Alprin and Maurice Haas——

The Court: Mr. Bauman, I hope you will pardon me, but I find it necessary to interrupt, particularly in view of the fact that the defendants will not have the opportunity of again speaking. I don't think you meant to say what you just said, that there is no question about the fact that two pieces of paper were signed, one of them on the 18th and one of them on the 20th.

Mr. Bauman: I meant to say "one dated," [9087] and I thank your Honor for correcting me.

The Court: Yes.

Mr. Bauman: That is entirely correct, and I want to say that I do hope that if I misspeak myself in that way, I appreciate that interruption— —

The Court: Only if I think it is significant. I know the tension under which counsel, having had the experience in summation, labor and the propensities for innocently misstating things. Only if I think it is material will I interrupt.

Mr. Bauman: I appreciate your Honor's doing that, and if I should misspeak myself like that, I hope you will know that it is an inadvertence.

I meant to say that there were two papers dated the 18th and the 20th, respectively. I would be the last one in the world to say they were signed on the 18th or the 20th, respectively, because I believe, and I ask you to believe, that those two documents were signed on the same day.

However, there is no question that they exist and were dated in that way. There is no question that H. H. Klein, Morris Alprin and Maurice Haas, who rendered a tax opinion in 1944, were acutely, acutely tax conscious of the ramifications [9088] of the Harwood deal.

Now when we talk about tax consciousness, let me be the first to say there is nothing wrong with that. Everybody is tax conscious. I am conscious of taxes every time I get my check from the Government, and I venture to say that every one of us is

conscious of taxes. But it is when tax consciousness leads us down the path of criminally conspiring to get away from our obligations, or what we think our obligations to be, that we step over the line from tax consciousness and into the line of conspiracy.

Now so far as these tax opinions are concerned, there were four of them that we have had in this court, and I am not going to debate with you whether they were right or wrong, and I did not present them to debate with you or with counsel whether they were right or wrong, but I think the way they came about indicates proper background for you to read the operations of Mr. Hyman Klein, Morris Alprin, and perhaps even Maurice Haas, the actions within the period of the conspiracy against this background of these opinions.

Now there were four. One was obtained, [9089] apparently, at the request of Mr. I. J. Klein, because it is addressed to him. And that is Government's Exhibit 21, which is addressed to Mr. I. J. Klein, care of the Waldorf-Astoria, and dated March the 3rd.

And Mr. Klein told you on the witness stand, in this court, that although he had been negotiating with Koerner since about the first of the year, that although that opinion refers to a combine for the sale of Canadian whiskey through a Cuban corporation, that although it refers to whiskey being furnished by a Canadian distiller, and the opinion was given to him by his brother, who was the managing director of a Canadian distiller, and although,

as he said to me in response to a question, his brother was the only Canadian distiller he knew, and in spite of the fact that he read this opinion, as he told you, he said, in words or effect, "I didn't know what it referred to or I didn't know what it meant."

[9090] Didn't know what it referred to? "Enclosed you will find a copy of a letter," and I am skipping part of it, "which you will find interesting and self-explanatory."

Didn't know what it meant, I suggest to you that he knew what this sentence meant, and I suggest to you that this sentence is the reason that he got another opinion within about six weeks from Maurice Haas.

"Another provision which must be kept in mind," and I am reading from Government's Exhibit 21, "is the section dealing with the foreign personal holding companies, wherein the American shareholders are required to report and include as taxable dividend income their proportionate share of this corporation's earnings."

So that in opinion No. 1 Mr. Klein had a warning that there were circumstances when the earnings of a Cuban corporation might be taxable as income during the year in which the corporate earnings were made.

I suggest to you that Mr. Klein must have found that gratuitous, and I suggest that you can find that Mr. Klein did not want an opinion with [9091] that in it.

So six weeks later he had Alprin get one from Haas. Did he get one from Burke, his tax man all these years in Baltimore? Did he tell Burke what the facts were in 1944? No. That was his privilege. However, he comes up to Morris Alprin and tells Morris Alprin that he had gotten a tax opinion, and I think you can find that he told Morris Alprin that the tax opinion said that the corporations would not be liable for American taxes.

Now, what opinion was he talking about when he told that to Morris Alprin? Was he talking about the opinion of J. Stanley Halperin, the one he said had no relation to the Harwood deal, or was he still talking about still another opinion which nobody has ever seen?

However, when Mr. Alprin got on the witness stand, his mind was very vague. I am going to read from page 8513 of the record:

"Q. I ask you, were you asked this question in the grand jury and did you make this answer:

" 'Q. Did you ever discuss the possible tax ramification of this thing with Klein? A. No, except his mentioning that he had received [9092] a tax opinion, his doing business through a Cuban corporation which was satisfactory and did not subject him to the taxes of the United States.' "

Mr. Alprin answered me as follows:

"Q. Did you make that answer, Mr. Alprin?
"A. That might be, Mr. Bauman.
A. I don't recollect it, but if those are the minutes of the grand jury, I most certainly did.

"Q. Having read that to you, does that refresh your recollection as to whether Mr. Klein told you that? A. I honestly couldn't say, Mr. Bauman.

"Q. Did you tell Mr. Haas at the time you communicated with him that Mr. Klein had a tax opinion which indicated that he would not be subject to United States taxes? A. I have no recollection of saying that to Mr. Haas."

You have seen an amazing number of instances of this convenient lack of recollection, and I say "convenient lack of recollection" advisedly.

Mr. Alprin told you he testified in the grand jury approximately a year before this trial. And when I asked him did he say a year ago to the [9093] grand jury that Mr. Klein told him about a previous tax opinion, he said he doesn't remember.

Is that the fact? Doesn't he remember? Was he telling you the truth when he said he didn't remember? or did he make that statement because Mr. Donohue had said in his opening that "from Riordan to Victory to McCarthy to Hill to the grand jury to this Court Alprin's story will be seen never to have deviated one iota."

Mr. Alprin didn't want to admit any deviations by any iota after his attorney had indicated to you that his story had always been the same. And so rather than say "My story hasn't always been the same," he resorted to the most convenient dodge of all,—"I don't remember."

Of course, when you talk of "I don't remember," or "I don't remember but it might have been thus-and-so," the master of them all, the master of them all is Hyman H. Klein.

I shall come to that, you may depend upon it, I shall come to that.

There is a very curious thing. One thing is clear: Alprin did not show Haas the provisions of the first two paragraphs of the letter of April 20th. [9094] That is clear, just about everybody agrees on that. Alprin comes in with an elaborately concocted story that the reason that he didn't see that, that he didn't show it to Haas, because the terms and provisions had not been agreed upon.

Well, is that the fact? Or is it the fact that Mr. Alprin and Mr. Klein, having consulted with Mr. Haas, were of the opinion that these were dangerous provisions in the light of what they already knew, both from the opinion of J. Stanley Halperin and their talks, if any, with Mr. Haas, that these would be two provisions to keep away from, and if you wanted an opinion that would be better than the Halperin opinion.

Again, I am not going into whether the opinions were right or wrong, what the effects of these acts were; what I am getting at and what I hope I am making clear is the fact that Mr. Klein from the beginning determined the kind of advice he wanted, determined the kind of advice he got and determined the kind of advice he took. And that when he blames

his later acts on "My lawyers did that," and "My accountants did this," there is always somebody else that is responsible for [9095] what he did and what he signed and what he swore to, I want you to remember what we are talking about now.

Then, about a year later there came opinion No. 3 with the gratuitous reference. And there was some testimony, I believe, I think Mr. Haas said he had a very hazy recollection that Mr. Klein didn't like that opinion because there was gratuitous statements in there.

Since when does the client tell the lawyer that he does not like the opinion because there are gratuitous statements in there?

Remember, ladies and gentlemen, when this opinion was obtained, Morris Alprin well knew that this contract had been signed, certainly by the R. C. Williams Company, not later than April 20, 1944, and by the people in Cuba sometime in May. Morris Alprin knew that. He had those copies, I have no doubt. However, when Mr. Haas asked him to send over the contract in connection with that second Haas opinion, what did he send him? Just the first part, the April 18th part, not the April 20th part.

Why did he do that? Because Mr. Alprin said, [9096] "I felt that had nothing to do with it."

Mr. Alprin has trumpeted up and down, everybody who has spoken to him, that "I am not a tax man; I am not a tax lawyer; I am not a tax expert; get the opinion of a tax man." He wants to tell you

that he took upon himself the legal determination of the tax consequences of that contract.

No, I say to you that Morris Alprin deliberately withheld this information from Maurice Haas at that time, just as deliberately as when within about ten days later Hyman Klein withheld precisely the same information from Mr. Burke. Why get that second opinion ten days later? Double-checking? Do you ladies and gentlemen believe that when, if he had wanted Mr. Burke's opinion all the while,—Mr. Burke was his tax man in Baltimore and available to him all the time in Baltimore; double-checking when he showed him half the agreement—and I say half; I do not want to mislead you about it—you know what I am speaking about; I am talking about the difference between the 18th and the 20th.

[9096a] Is that the way you double-check on an opinion.

But Mr. Burke testified up here, and you have seen Mr. Burke was a man with no motive to lie to you. Why would Mr. Burke lie to you? And he said, "I never saw this agreement of the 20th in connection with the opinion. Mr. Klein never showed it to me."

And so Mr. Klein, when he testified about that, at first said he didn't remember whether he showed it to him or not, but then when pressed on cross examination, he said, "Well, I think that Mr. Burke was mistaken. It is my recollection—my best recollection is that I did show it to him."

Now it is perfectly obvious that he did not show it to him, because there isn't one reference made in that Burke opinion to any of the provisions of the supplementary agreement of April the 20. And when you consider, ladies and gentlemen, that Haas at no time was showed that agreement of the 20th, and that Burke at no time was showed that agreement of the 20th, is it not reasonable to conclude from that that Alprin and Klein deliberately withheld from the people from whom they were obtaining [9097] opinions the provisions of that agreement of April the 20th, not knowing what the legal effect of it might or might not be, but taking no chances, and that the Government argues to you.

Why was the contract broken in two, the April 18th and the April 20th breakup? Well, Jacobs said that Alprin suggested it, and Klein said, "Well, it will look better."

Doesn't that fact tie in to the fact that that April 20th agreement was never shown to Haas or to the accountant in Baltimore?

Now Alprin came in with an elaborately, as I said, concocted story of the fact that the provisions had not been agreed upon by the time the agreement of the 18th was signed, but this document, Government's 254, which is the letter that Mr. Alprin furnished to Mr. Hill, you remember, is dated April the 19th, 1944, and with the Court's permission I am going to read the first paragraph or two.

It is from—the initials over here are M. O. A., which I take it stand for Morris O. Alprin, and is

addressed to H. H. Klein in Baltimore, dated April 19:

> "Dear Mr. Klein: Confirming our telephone [9098] conversation today regarding the above entitled matter, and my conversation with Jules Jacobs, Esq., attorney for R. C. Williams, the following is the procedure in the matter:
>
> "1. Mr. Jacobs is sending to you a copy of the agreement with the supplementary agreement and the order for 100,000 cases which please read carefully and telephone me with respect to any comments or suggestions concerning the same."

So that I think it is reasonable to infer that on April the 19th, when he wrote this letter, whatever hadn't been agreed on on the 18th was certainly then agreed on, and I suggest to you that the entire matter had been agreed upon on the 18th, or else this letter wouldn't have been written on the 19th, although it refers to a telephone conversation of the 19th.

And you remember these questions and answers, do you not, ladies and gentlemen:

> "Q. Do you remember being interrogated in the Grand Jury, Mr. Alprin, in connection with this matter? A. Yes, sir.
>
> [9099] "Q. Do you remember being asked this question and did you make this answer,"

and then I read:

> " 'Do you know who suggested that this contract be written in two parts? A. No. I think

that the writing of the contract in two parts was an attempt to conform with the opinion given by Mr. Haas.' "

And I said:

"Were you asked that question and did you make that answer in the Grand Jury, Mr. Alprin? A. I don't remember whether I did," was his answer, "but if that is the minutes of the Grand Jury I definitely did."

Now, ladies and gentlemen, if his recollection of this long and involved story of why it was that the contract was broken into two parts was the fact, then how could he possibly have any doubt about whether he told the Grand Jury that the writing of the contract in two parts was an attempt to conform with the opinion given by Mr. Haas? Could he possibly have been in error, or could he have any doubt about having made such an answer in the light of the elaborate concoction that you heard that went [9100] on and on and on?

Now I don't doubt that Mr. Jacobs was mistaken as to some of the details in connection with the fact of the matter that he said that the contract was broken into two parts in conformity with Mr. Haas' opinion. The fact of the matter is that there were certain provisions that were taken out of the contract, I think you will remember, in conformity with Mr. Haas' opinion. And when Mr. Kiendl referred to Mr. Jacobs' admission of an error as being abject, I think Mr. Kiendl's memory was

sagging a bit, because at page 862 of the record the following question was asked and answer made:

> "Q. And when you testified heretofore (this is Mr. Jacobs on the receiving end) that the separate letter prepared at the instance of Morris Alprin was prepared in the light of the tax opinion you were mistaken? A. Yes, sir, but I was not mistaken that it was at the request of Mr. Alprin that the letter was actually drawn."

Now what is abject about that.

Take the matter of payments of 60 cents a case to Mr. Alprin. Mr. Jacobs said that those [9101] payments were made at the request of Mr. Klein. Now what Mr. Klein said about those payments at this trial is a little more difficult to follow.

I gather that at one place Mr. Klein said that Alprin told him that he represented R. C. Williams and received retainers, but on cross examination Mr. Klein said he heard in court for the first time that it was for legal services, and then a little later on he may have heard—that is the most delightful answer in the world, he may have; of course anything may have happened—he may have heard about 60 cent payments to Alprin for the first time in this court.

Now what did Alprin tell you on the witness stand about those 60 cent payments? Well, I gather he raised the question with Mr. Klein and said that "William was receiving some incidental benefits from this and I want to see if I can't get those 60

cent payments to me," and Klein suggested, "Well, take it up with Williams."

And then a rather amusing follow-up, Mr. Alprin said, laughingly, laughingly, "If I get it, I will give you a third of it."

That was really very funny, "If I get it, [9102] Mr. Klein, I will give you a third of it," laughingly.

But when I asked him what his memory of the answer was, he didn't remember, didn't remember the answer.

I should like to read just briefly from the minutes of the trial, page 8538. I am reading my questions and Mr. Alprin's answers:

> "Q. May I ask you, sir, did you tell the grand jury that Klein said, 'I mean it, go over there and get it'? A. I repeat, Mr. Bauman, if those are the minutes of the grand jury I said it. I am not questioning that I said it. I have no recollection of saying it.
>
> "Q. Now, in that same conversation, or in connection with that same conversation were you asked this question and did you make this answer:
>
> " 'You originally said, I think, that you offered to give Klein a third of it and did it jokingly. A. That's right.
>
> " 'Q. Did he pick you up on it? A. He said, 'I can spend some money, something in a jocular vein.' "

[9103] Apparently this was just a big laughing matter between Mr. Klein and Mr. Alprin. And I asked Mr. Alprin:

"Did Mr. Klein say that to you? A. I have no recollection of it, but in the light of our discussion along that line in a humorous vein he may have. I don't remember."

I suggest to you that the Government contends that Klein did not hear about that at this trial for the first time, that on the facts as you have heard them, those payments couldn't have been made, and wouldn't have been made without Hyman Harvey Klein knowing about it, and that Mr. Morris Alprin, when he testified in this court about that and about every other matter had a convenient memory, a convenient memory that failed to remember what he said in the grand jury or whether he said anything in the grand jury of the nature which I asked him; a convenient memory, ladies and gentlemen, that does not remember anything Morris Alprin does not want to remember; the same kind of memory that Hyman Klein and Maurice Haas each displayed to you during the long days they were on the stand.

Well, the Harwood deal went forward; and [9104] although Williams had an import division, Harwood was handled by the wholesale division, you remember, which was headed up by Mr. Koerner.

Allocation sheets were received from Baltimore, and they couldn't be changed. Those 60 cent payments in the book were recorded by Mr. Salvatore, based on memoranda received from Mr. Koerner; at the end of the month checks would be prepared

based on the 60 cent payments, as you remember it, and, of course, your recollection of these facts controls. Mr. Salvatore would have letters prepared for Mr. Koerner's signature forwarding the checks for the 60 cent payments to whomever was to receive them, and you will remember, I think, that the evidence in this case indicates that Morris Alprin got over $40,000 in such payments, which Mr. Salvatore entered in the books as a retainer fee on Mr. Koerner's orders.

Well, the invoices were prepared in Baltimore. There is no question about that. Even letters for the signature of the Cuban officers were prepared in Baltimore. There is no doubt about that. I am holding Government's 153 and Defendant Klein's Exhibit J. Government's 153 is a letter signed by [9105] F. Gurri, with the initial R, and we will talk about Mr. Rokoff a little later, in the corner; so it is clear, and it was stipulated I believe, that this letter was typed in Baltimore and this letter, dated January 2, 1946, and I am referring to Defendant Klein's Exhibit J—I am holding a photostatic copy; the defense has the original, I assume—Agencias Destiladores by F. Gurri, and the initials here, F. G., I assume, for Francisco Gurri or F. Gurri, and as those of the stenographer, HGZ, not W, not R, not WR, not even a blank, but HGZ.

Mr. Rokoff was a very versatile man.

Things went along modestly during 1944. Harwood had not reached the fantastic stage yet. That was to come in 1945 and 1946. But nonetheless, on

December 30, 1944, Hyman H. Klein gave Morris Alprin a check, I think it is John Dunbar, but don't hold me to that, a corporate check for $37,500, to take care of the services, according to the testimony, in 1944, and at the very same date a check for Irving Koerner made out in his own name—he wasn't concerned about Jules Jacobs finding out about that $37,500—for $37,500, and so on December the 30th, 1944, these two checks were written and presumably [9106] delivered a short time thereafter, totaling the round sum of $75,000.

Now Koerner's, according to Mr. Klein, was an advance. Mr. Klein had no real recollection of the circumstances of it; it was only $37,500, and you remember, things were happening at such a rate that he couldn't be bothered remembering, and I am not attempting to quote him, couldn't be bothered remembering about $37,500; and you remember I said to him, "In 1944, Mr. Klein, in 1944?" And he said, "Well, no, not in 1944," but nonetheless, he doesn't remember very much about this advance, and he has no real recollection of the incident. And as I remember what he said, Koerner never repaid any part of the $37,500.

And I suggest to you, ladies and gentlemen, that from that day on, from the day that Koerner and Alprin got this windfall of $37,500, which still sounds like a lot of money to me, Hyman Klein owned Morris Alprin and Irving Koerner.

What a carrot to hold out in front of their nose, $37,500, to take Mr. Klein's word for it, for Mr.

Alprin's services during eight months of the year, and he owned them and bought them just the way [9107] he bought Maurice Haas with that draft of $35,000, and from the date he gave those people that money forward I submit to you that anything Mr. Klein asked them to do, with the background of the fabulous Harwood deal, they would willingly, willingly do, because if this is what they got for their services—well, I don't want to say what Koerner got his for but you draw your own conclusions as to what Koerner got that $37,500 for. It was an advance, it was never repaid, Klein doesn't remember it. Well, I guess it is fair to say, then, that Koerner got the money, never repaid it.

[9108] And I say from that day forward with the background of the fabulous Harwood operation and the promise of wonderful financial things to come from Hyman H. Klein, these men were bought and paid for.

Now, 1945 and 1946 the Harwood deal was going full blast and there was some conversation between Mr. Klein and myself on cross-examination about whether there were thirteen corporations or seventeen corporations, it does not really matter, but there were a number of corporations operating and functioning in the Harwood picture, and by the Harwood picture I include Jockey Capp and all the rest of them, in 1945 and in 1946.

However, among them there is one corporation that never did any business and that is Tivoli Trading Company. How do I know it never did any

business? Mr. Klein told me so. When I asked him about it, as I remember it, I said to him "Did Tivoli do any business?" He said "Not at the beginning." I am not attempting to quote this exactly; I am giving you my recollection. Yours, of course, is more important.

I asked him again and he said "Not at the end." And I said "How about the middle?" and he said "No, Tivoli never did any business."

[9109] I think we can assume from Mr. Klein's answers that it was what he called it, what he called it before the Internal Revenue Agents and what he called it in this court room, a catch-all, a depositary. That corporation was formed on April 9, 1945, as I said, without any specific purpose. Mr. Klein said he had nothing in mind for it to do when it was formed, and as we followed Tivoli and a lot of the things that came out of Tivoli, you will see that Mr. Hyman H. Klein and his accomplices left no stone unturned to keep the facts of Tivoli, as well as some others, from the Treasury Department.

From its very inception strange things started to happen to Tivoli. Klein holds all the stock in Tivoli in his own name as the beneficial holder, he says, for his three Canadian associates. However, my recollection is that he admitted that he had refused to do that very same thing in the case of Agencias. He had refused to hold the stock for the beneficial benefit of the three Canadians in Agencias, but now he wants you to believe that in this com-

pany he was holding the stock, but it was actually only one-quarter owned by him.

[9110] Mr. Klein told the Revenue Service in those interrogatories—and we will come to those interrogatories—that the Canadians acquired their interest in Tivoli on original subscription in April 1945, and when I asked him about that representation to the United States Government department investigating the affairs, tracing the proceedings of these individuals resulting from the Harwood deal, Mr. Klein told me, well, that was a mistake. That was one mistake. But you will find more. You will find misstatement after misstatement, and a little later I am going to read one misstatement to you and then Mr. Kiendl's deathless remark that if the Revenue Service wanted to know something, all it had to do was come and ask Hyman Klein.

I say to you, ladies and gentlemen, that the whole story of Tivoli is a falsehood, and I am not going to get into an argument with Mr. Donohue whether they are all liars or all not liars.

I don't feel like calling names; I will point out what I think are the particular lies, if my time holds out that long, but I don't want to get into a name-calling contest.

You make that determination. That is your [9111] determination to make.

Who are the liars and who are telling the truth and what were they lying about and what were they telling the truth about? I can tell you what I recommend to you to believe, but I don't propose

to call all of them a bunch of liars and say because they are all a bunch of liars to find them guilty.

I am not required to resort to that. There is too much in this case for me to stoop that low, and I wouldn't do it anyway.

The president of Tivoli—before I leave that subject of Mr. Donohue's remarks, I got the impression yesterday that Mr. Donohue had not been listening to the story on opening that Mr. Kiendl had told. You remember that story Mr. Kiendl told, when the facts are against you try the case on the law, and when the law is against you, try the case on the facts, and when both are against you, try the District Attorney.

Well, Mr. Donohue for over an hour yesterday must have thought the law and the facts were against him and, after an hour, ladies and gentlemen, after an hour, what is the skulduggery that took him an hour to develop of which I am accused? One, I did [9112] not call Victory and McCarthy, who were just as available to Mr. Donohue's subpoena as they were to mine, and, two, I refused to put words in Mr. Holohan's mouth when he was on the witness stand.

This from Mr. Donohue is especially amusing, because you will remember during the course of the trial it was Mr. Donohue who asked, "Did you talk to Mr. Bauman? Did he show you papers? Did he refresh your recollection? In effect, did he put words in your mouth?"

Now, because I did not put words in Holohan's

mouth, I am picking and choosing and guilty of all sorts of sins. That took an hour.

However, let us get back to Tivoli.

The Court: Not until we have a 15-minute recess.

(Recess)

[9113] Mr. Bauman: Well, I just got back to talking about Tivoli again, and as I may have said, and if I did I don't apologize for it, because I am going to say it again and again, the whole story of Tivoli was a falsehood to throw the Treasury Department off the track.

Tivoli was formed; Ellis Rosenberg, Mr. Klein's man Friday, was the president. And in September and October, 1945, according to the testimony that you have heard in this case, Mr. Klein collected checks from Koerner, Roer, Alprin, Rosenberg and other of the faithfuls, totaling $2,850. And you remember those certificates that Mr. Klein had, which indicated on their face that they had been prepared on November 26th, or at least they were dated November 26, 1945?

And, as I remember Mr. Klein's testimony, Mr. Rosenberg came back to him, sometime, or maybe at about the time those certificates were prepared, and told him that he did not think it was a good idea to take these people into Tivoli for various reasons: they might make trouble at meetings; they might even demand to see the books.

Well, I am sure, as we go into the [9114] Tivoli books, you will see that that was enough of an

argument to convince Mr. Klein he did not want anybody in that kind of a position but Mr. Rokoff, the neatest man ever to rewrite a set of books.

Well, after Mr. Rosenberg had this conversation with his employer, Mr. Klein says sometime between November 26, 1945, and December 31, 1945, he went around buying up all these subscriptions by the various people, paying them cash, and getting receipts for the cash, and I would like to know what was on that half of the receipt that isn't in court.

Now Mr. Klein says that was half of a monarch size sheet. Mr. Alprin says that was not all of the thing that was on the paper that Mr. Rosenberg showed him.

I would like to know what Rokoff, the tidy bookkeeper, or somebody down there, clipped off. Was there an ink spot on it, an erasure? I don't know. But I sure would like to see it.

Now in spite of the fact—by the way, Rokoff wasn't so sure of the dates, and I will agree that on matters of this kind there may be mistakes [9115] as to dates. Mr. Klein felt that all these subscriptions were bought up before the end of the year.

Mr. Rokoff testified that there was an entry I think in one of his checkbooks or something that indicated that it may have happened sometime thereafter.

But one of the things shown in the Tivoli books is that on November the 20, 1945—and I am referring to Government's 380-B, according to the books, the sale of 2850 shares of capital stock at $1 per share to H. H. Klein, dated November 20th—now that was part of the rewriting of the books, because if you take people's money and they subscribe to stock, and you can't sell their subscription to the stock for one reason or another, show the money, show from whom it came, show the purpose for which it was paid, show that the thing was canceled, show that according to Mr. Klein's own minutes, which he introduced in evidence here, Mr. Klein bought that stock not on November 20th, as is set forth in the book, but, according to his own records, on December 31st.

[9116] And I tell you this because what I tell you indicates a propensity on the part of Hyman Klein, William Rokoff and company to rewrite books to confuse Internal Revenue, to mislead Internal Revenue, to divert the intention of Internal Revenue from the names of the people who had subscribed to that stock, and I tell you that Mr. Klein and Mr. Rokoff, as well as the other defendants—Mr. Rokoff, of course, is not a defendant, he is a co-conspirator—were perfectly prepared and did do whatever they thought was necessary to confound the Revenue Service in its investigation of this venture.

And isn't it interesting, ladies and gentlemen, that at this point, as Mr. Donohue brought out on

his cross examination, there was a great deal of money in Tivoli. By "this point," I mean at the time Mr. Klein was going around buying up subscriptions in a corporation into which, as I remember it, hundreds of thousands of dollars had been poured. Isn't it strange that Mr. Klein at that time had a sufficient hold on Mr. Roer, Mr. Koerner, Mr. Alprin and others to walk up to them and say, in a corporation in which there were hundreds of thousands of dollars, "Nope, I have decided [9117] that you are not going to be a stockholder in Tivoli Trading Company. Here is your $500 back."

Now by June of 1946—you remember where there was talk at the end of June of a hiatus in OPA and it was pretty clear to everyone at that time, the Government argues, that the end of OPA was in sight, and that for all practical purposes the Harwood deal as it had existed under OPA was about finished, and so the problem was to keep the profits that had been made from the Harwood venture. The trick was to hold on to the money they had made, and from June 1946 forward I say that these defendants were willing to do anything to hold on to that money.

Now what were some of the things that they did?

The first relates to the formation of the corporations, which happened sometime in June of 1946, and you have an interesting situation there, because there is no question that in June of 1946, Roer, Alprin and Koerner all formed four Cuban corporations,

and I don't think anybody denies at the same time and at the same place. They were all together, and Mr. Rosenberg was there, too.

[9118] When Mr. Klein was shilly-shallying with me on the stand about whether he knew before or after the corporations were formed of their incorporation, I say to you that was not a truthful and a straight-forward answer.

When you consider the fact that Ellis Rosenberg went to the office of Mr. Klein's Cuban lawyer and then went to the office of Valverde, and we will come to that just a little bit later, and arrange in effect for these twelve corporations to be formed, that I don't believe, and I submit you don't believe, that Mr. Klein did not know about it every single minute.

I don't doubt for one minute that when Mr. Rosenberg got back to Baltimore after that trip that Mr. Klein had a list of those twelve Cuban corporations.

I submit on the record in this case you can find that Rosenberg was Klein's—he was his messenger, he was his factotum, his lawyer, he was whatever Klein wanted him to be.

Isn't it curious that these three should go? Roer, Carload Roer, was a long-time employee who had put this Harwood deal together. Koerner was Klein's puppet at R. C. Williams. And Alprin was [9119] just Alprin.

Why did they go to Cuba to form corporations? Klein said it was their own idea and there was some preposterous story about Ellis Rosenberg wanting

to go into the imported cigar business under his own label.

Do you believe that?

However, I can tell you one thing, I can tell you one reason that they went down to Cuba, and I submit to you that it is a very important reason, that forming four Cuban corporations gave them four Spanish names to operate under; gave them four Spanish clerks to cover their activities with, and to cover the activities of Hyman Klein with, and there wouldn't be a record in this country, there would not be a record in this country of the incorporation of those twelve corporations.

You go one step further into the circumstances of the formation of these corporations. Valverde told you he was a friend of Moran and de Cubas, and that Moran retained him to form some corporations. De Cubas brought Alprin, Koerner and Roer to his office and they talked about forming the Cuban corporations and you may remember in my examination, I think it was, I may have said something to him about [9120] the question "And then you prepared the papers" and he said, "Oh, no, the papers were all prepared, the papers were all ready." They had been prepared in advance by Moran and de Cubas who did the legal work. And all Valverde did in this situation was to lend his name as the incorporator of these Cuban corporations, so that even if you found out that Moran was Klein's Cuban lawyer, and then went to see the corporations, that Moran had formed, you still would never have gotten a lead to these twelve.

I submit to you that this talk about there is going to be a conflict of interest between Klein's corporations and the corporations of these individuals is not borne out by the facts.

Take the situation as it occurred: There was not business. All that these people were down in Cuba at that time for was to form corporations. There was no business. And if any business later arose between Mr. Klein's corporations and these twelve corporations, it would have been a perfectly simple matter, perfectly simple matter for the attorney at that time to say, "I want to disqualify myself, I can't represent you both," although if both [9121] sides agree there is nothing wrong with that, and furthermore if there was such a conflict of interests, I think this Exhibit FQ 1 that I am holding, I did not put this letter into evidence, but here it is, if there were such a conflict of interest, how come this? and I am reading from a letter signed Alberto on the stationery of Alberto Valverde Abril, dated Havana, September 27, 1949,—

> "..but for your information, and this is strictly confidential, since you and your associates constitute the corporations, I have to give a big part from my fees to Dr. Ricardo Moran because he send you to me."

There wasn't so much of a conflict of interest there, was there?

I suggest there was no conflict of interest at all, that this was just putting these men one step beyond, always one jump ahead, to make it harder

for any investigator of the Internal Revenue Service—and you can bet your life they knew that the Internal Revenue Service was going to look into the proceeds of the Harwood picture, to make it as difficult for those investigators to follow as they could.

[9122] Then we come to—I am trying to do this chronologically—September 1946, and talking more particularly about September 16th when $8,347,000 worth of Canadian securities were sent up to Canada on the request and at the direction of Klein, the Government submits, under the circumstances related to you by Mr. Holohan.

I want to know what earthly reason Mr. Holohan, a banker of, I believe, 41 years with the Royal Bank, a man who rose to be the head of the New York agency of the Royal Bank of Canada, I want to know what reason that man would have for coming here and saying something that was not the truth.

Your job is to evaluate the witnesses in part, and that about oversteps my statement that I would not talk about the law to you, but I am sure the Court will explain to you that you will judge the credibility of the witnesses. And in doing that what interest does Holohan have to lie? And did you observe him? Was he volunteering things all over the lot or was he doing his level best to limit his testimony to what he remembered? I submit the latter is true. That man told you, to the best of his recollection, "This is what I remember." [9123]

He said, "I can't say any more, I don't know any more, but I can say this, I can tell you that on the date I got that subpoena, that inspection requirement"—I think it is called that—"that OPA inspection requiremer.', I wrote September 16th on it in my own handwriting and then I went down to the lawyers, and while I was at the lawyers I called Mr. Klein."

Even Mr. Klein agrees that he got a call from Mr. Holohan.

"I said to Mr. Klein, 'I have this inspection requirement, or I received a paper of some kind,' "—I am sure Mr. Holohan did not know the difference between an inspection requirement or anything else, —" 'I got this official looking paper and they want to see some of the records pertaining to some of these corporations.' "

Then, according to Mr. Holohan's testimony, Mr. Klein said, "Don't show it to them, and get my $8 million in securities up to Canada."

Mr. Holohan said to Mr. Klein, "I will need a confirming letter. I will do it, but I will want a confirming letter from you."

And Mr. Klein said, "I will send it."

That is as I remember it, and again, your [9124] recollection is what counts.

Now, originally Mr. Kiendl brought in a subpoena, one which was not even entered in the files of the bank; you remember that book in evidence that listed all the subpoenas and attachments and that sort of thing that Mr. Brown put in, and that

one was dated the 16th, but served on the 18th, and you will remember from the exhibits that these securities were actually sent to Canada, according to the bank records, on the 16th.

When that subpoena came in that said September 18th, I thought, could I have been that wrong? Could I have been that wrong that the actual document was not received at the bank and Holohan could not have made that call? And so after Mr. Kiendl had introduced that, I subpoenaed the bank for any other or earlier documents of that kind.

You will remember that then the document which Mr. Holohan had written in his own hand September 16th came into this court room.

I want to say one thing in all earnestness, and perhaps I s' ould not even say it, but I want to say it, and that is that I don't think, that I know very well there was no intention on Mr. Kiendl's [9125] part to withhold that earlier subpoena from you. I know that. I don't suggest for one minute that it was anything like a deliberate act. But I do say that his people, whoever dug that up, just did not look far enough and if they had looked far enough they would have found this document of September 16th which bears out Mr. Holohan one hundred per cent. And after those conversations, those three letters dated the 12th, came up. Isn't that just like William Rokoff and Hyman H. Klein?

I submit to you it is the Government's position that those letters were deliberately predated when Mr. Holohan told Mr. Klein in Baltimore that there

was a Government agent wanting to look at the records of these corporations.

[9126] William Rokoff, the rewrite man, "Mr. Klein, my boss, would stoop at dating letters three or four days before the event?" I don't think you will believe that. There has been too much of a demonstration in this case that they don't have that much respect for records and dates and times and places and in whose names stock is held, and the things that concern business men.

And I ask you to believe, ladies and gentlemen, that Hyman Klein deliberately had those letters predated, and Hyman Klein knew that when he came into this court and told that story, and that it was a deliberate attempt on the part of Hyman Klein to mislead you in an area where he must have known better, instead of trying to disqualify a man, or to discredit a man of 41 years' service with the Royal Bank of Canada. I say shame.

Well, we get a little closer to Mr. Haas now. And Mr. Klein told him that in September or October the deal was coming to an end—this isn't exactly what Mr. Klein says, but it is what Mr. Haas says—and that he wanted a quick computation made of his share. And Mr. Haas sat down in the office in Baltimore and made a quick computation of his [9127] share and gave it to Mr. Klein, and you will remember at that time, in September or October—and there was a lot of sort of back and forth yes and no answers on this, but we finally resolved it and I think Mr. Kiendl pinned it down—

that at the time in September or October, when Mr. Haas prepared that figure for Mr. Klein, Tivoli was already out of the picture. Tivoli was not in the computation, and so this story about the transfer of the million and a half dollars between Regan Potter and Tivoli, which we will come to in a moment, was a concoction, because you will remember that Mr. Klein said there was some Scotch deal that came up. They were going to buy a distillery in Scotland, I think he said, and so Regan Potter loaned Tivoli a million and a half dollars in connection with that Scotch deal.

Now isn't it astonishing that of all the corporations that Mr. Klein and the Canadians had at their disposal, the one corporation for this so-called Scotch deal was Tivoli? And I say it is astonishing because that is the one corporation, and I asked Mr. Klein this on cross examination, in which the Canadians had no evidence of ownership. It is the one corporation in which the stock was all in Mr. [9128] Klein's name.

So I say it is a little unusual that they, out of the vast number of corporations at their disposal, picked Tivoli. I ask you not to believe it.

And isn't it strange, too, that Tivoli is going into this Scotch deal when Tivoli is the only one—well, let me withdraw that—that Tivoli is a corporation with very substantial contingent liabilities?

Now I suggest to you that if they were going into a Scotch deal, they would have used a corporation in which the Canadians held stock, actually held

shares of stock in their hand, and one without contingent liabilities totaling at least $800,000, and I say that it defies common sense to believe that story about the Scotch deal.

And the reason that it becomes important that even in September, when Mr. Haas was making those figures up—and I don't mean making them up, I mean figuring up the share—if Tivoli was excluded then, then this whole story about the transfer of the million and a half dollars for a Scotch deal is a complete fabrication, and when it was told to the Revenue [9129] Service in the statements in evidence, it was told to them in an effort to impede the Treasury Department in the collection of its revenues.

Well, now we come to Mr. Rokoff and his preparation of the books and trial balances.

You will remember that Mr. Rokoff said that he prepared these trial balances, Government's 381, sometime around the end of 1946, and that in preparing these trial balances he included an item of a million and a half dollars which was paid to Tivoli as commissions. This was later changed to loans receivable, and he says that Klein told him to make the correction.

I said to Mr. Rokoff—I am reading from my examination on redirect of Mr. Rokoff, page 5162—about that change:

> "That would have required a specific instruction from Hyman Harvey Klein; right? A. Yes, sir.

"Q. And you did make those changes, is that correct? A. Yes, sir."

And then you remember I went into the problem of the fact that the books of Regan Potter, [9130] which we have in evidence here, Government's Exhibit 379, nowhere reflect any entry on Mr. Rokoff's balance sheets that there was a million and a half in commissions paid to Tivoli.

Now you remember we went into the preparation of balance sheets, and you prepare a balance sheet by taking off the balances of each account and putting them down—I beg your pardon, you prepare a trial balance; and, by the way, I was astonished when Mr. Klein, who did not know the difference between a journal and a ledger, told me the difference between a trial balance and a balance sheet, or, at least, corrected me when I misused the word, and I misused it again. I am talking about trial balances.

Trial balances merely take off the bottom figure in each account, and they are listed on debits and credits and you see if the books are balanced. Then you can use the figures in there for preparing balance sheets or profit and loss statements, or whatever other financial reports you want. But in order to get a figure in your trial balance, it must exist in some ledger account, otherwise it can't get into the trial balance. That is all the trial [9131] balance reflects—ledger accounts.

And so when there is no reflection in the books of Regan Potter of the fact that the money was

originally recorded as commissions, it is very, very clear that this book has been completely rewritten, because if there were a correction made, the page with the correction would still be in there, and it isn't in there, and it isn't in the Tivoli book either.

Now there were two sides to this thing. There was the Regan Potter side, and there was the Tivoli side, and both of those books were rewritten, ladies and gentlemen, I suggest to you, to eliminate the reference to the earlier payment as commissions of that million and a half dollars, so that there would be no trace, no trace, of the fact that such an entry had originally been made.

And why should there be no trace? Because it belies this whole story of the Scotch distillery, which is a complete fabrication, completely made up from beginning to end, and if the books existed showing that there had been this money paid as commissions, you would of course know, nobody could claim that it was a loan to buy a Scotch [9132] distillery, but once they hit upon this Scotch distillery story, this million and a half dollars had to be corrected, not only in the books of Regan Potter, but in the book of Tivoli as well, two bound books, completely rewritten.

Now is there any doubt in your mind—well, let me ask it another way: Why do people rewrite books? Why do people rewrite—I don't mean cross out and correct—why do people rewrite from beginning to end books? Because Mr. Rokoff's esthetic sensibilities are offended by an ink eradicator on a page? I don't think you are going to believe that.

I say that the primary purpose of any man who rewrites a book, and not only one book but two sets, the primary purpose is to impede any Government Treasury investigator in his investigation. That is why people rewrite books. You know it and I know it and that is why Hyman Klein and William Rokoff were responsible for the rewriting of these books.

I have the book of Cameron Stuart here, which is a mute testimonial to Mr. Rokoff's neatness. This is Exhibit No. 378. I am looking [9133] at the first page, with blot marks all over the thing, apparently ink eradicator all over it, and you can just about see that for yourselves. But he wouldn't take that one page out to rewrite that. I mean, his sense of neatness wasn't offended by that; nor was it by that interesting lining out of an entry of $3,000,000 at the request and direction of Hyman Klein.

I ask you, ladies and gentlemen, as business people, as people who operate in this community in your every-day lives, why do people rewrite books, and why did Hyman Klein and William Rokoff rewrite the records in this case? And I say that you must conclude, you must conclude that their principal reason was to hide and befuddle and befog the Treasury agents when they came up.

I can't think of any other. And this story about wanting to give the Canadians a copy of the Tivoli book, why? According to Mr. Klein's testimony, as I remember it, there were always two sets of books. There was a set of books down in Cuba,

and there was a set of books in Baltimore. I don't care whether you call them memorandum [9134] records or whatever other name you use. I say there were two sets of books, and isn't it interesting that the Canadians wanted a copy of the book of Tivoli, but Mr. Klein didn't want a copy of the books of the other corporations which he brought up there, and they were there, and they were available to him, and Mr. Rokoff told you that he brought them both into agreement.

There he sat in his little room, and he gave me an answer that I thought was wonderful. I said, "Did you bring the books into total agreement? Did you bring the books into agreement?" or something like that. He said, "Only where it was necessary."

Now at that time in March of 1947 there are two complete sets of books, the Cuban books and the memorandum records, and when Mr. Klein walked away from this deal, after it had been terminated, he did not want a copy of those books? You bet. He did not want any part of those books. He didn't want those books in the United States, and I submit to you that he brought those books up to Canada just so that they wouldn't be in the United States.

They weren't so bulky that he couldn't [9135] contain them or he couldn't keep them or use them, or have them available, and they were just there and ready for him.

But, oh, no, he had no interest in these things.

"Mr. Bauman, I am a business man, not a bookkeeper."

And then we came to the point where Mr. Haas started to write work sheets from Mr. Rokoff's trial balances. Now Mr. Haas is a certified public accountant. He knows what work sheets are. He must know what the importance of work sheets are. These were prepared in 1947. I think that is right. Mr. Haas says that he did not know anything about the tax difficulties of Mr. Klein until the jeopardy assessments were left with him, left in his office in 1948, and I submit to you that Mr. Klein himself has testified that he knew that the Internal Revenue Service was subpoenaing his records in the middle of 1947, after Mr. Haas had prepared his estimate, and do you believe for one moment that Hyman Klein did not tell Maurice Haas, his accountant, and the man who was to prepare his ultimate return, that "the Internal Revenue Service has been subpoenaing my bank records"?

[9136] I submit to you that Haas knew that in 1947. And so when Mr. Haas destroyed those work sheets, he said it was his practice to keep them two or three years, which would have made it 1949 or 1950, that his act of destroying those work sheets was a deliberate act, a deliberate act.

There were changes on there. That million and a half again: you remember Mr. Klein came to him and said, "Well, there seems to be a little problem with Mr. Rokoff's trial balances and balance sheets, a mistake of a million and a half."

And Mr. Haas made the corrections on his work sheet, and then he prepared the statements, 371, the consolidated balance sheets. Why is it, ladies and gentlemen, that every time somebody makes a mistake with relation to that entry of the million and a half dollars every book and record and paper is destroyed? The original Regan Potter record, the original Tivoli record, the original of Mr. Haas' work sheets. What an amazing coincidence.

But I don't want to theorize with you about this. I want to talk about Renee Bennett for a moment, and the reason that the defense is very [9137] properly concerned with the testimony of Renee Bennett is that you saw her, she is a perfectly nice, cleancut girl who works in an office, and it so happened she worked for Mr. Haas, in his office, and she testified that she made that entry on page 24 of Government's 379, expending a million and a half dollars, to the best of her recollection, at Mr. Haas' suggestion.

Now Mr. Haas couldn't call her a liar. It wasn't that he wanted to be a splendid fellow. He couldn't call her a liar. She knows her handwriting. She testified, "I wrote that."

"At whose direction? A. My best recollection is Mr. Haas'."

Who else's direction? Who else was going to tell Renee Bennett to enter that million and a half dollar expenditure in the books but her boss, Maurice Haas?

But still he wants to walk away from it. Still he wants to walk away from it.

"No, no, she must have been mistaken. I had nothing to do with it."

[9138] So that again Mr. Haas wants nothing to do with it, tear up the work sheets, throw them in the wastebasket, let us get as far away from that entry as we can.

Mr. Bender told you yesterday that I had not shown you that there was anything wrong with that entry, and I haven't. But what Mr. Bender didn't tell you, and what Mr. Bender should have told you was that we did not give you that proof because the proof we wanted to give you was ruled out by the Court as irrelevant, immaterial and incompetent.

Mr. Bender should not have attempted to mislead you that way. I want to talk about the Tivoli book for the moment. I do appreciate your patience very much. I know it isn't easy to pay the kind of attention you have been paying, and I want you to know how much I appreciate it.

This Tivoli book was bought in Canada, Burtons, Limited, Montreal. There is no denying that. William Rokoff forgot to scrape that tag off, obviously. And since Mr. Rokoff was in Canada with Mr. Klein in 1947 and Ellis Rosenberg, in that book-writing session, it is quite obvious he had to admit that this book was bought in Canada in 1947, [9139] although the entries in it go back, of course, to 1945. They start on May 5th.

Remember about this book of Tivoli that Tivoli was a corporation which, according to Mr. Klein, never functioned, never had any business, never did

any business. And yet entry after entry show received commissions from this, received commissions from that, John Dunbar, received commissions from Douglas Ryan, and these entries go along like a regular corporate set of books, until you remember Mr. Klein's testimony that this corporation never did anything, and that this book was written to account for the funds that were poured into Tivoli.

That is all.

This is a manufactured book to account for the money that got into Tivoli, a firm that never did anything according to Mr. Klein, its owner.

You come along to March 27, 1947, accrued commissions and expenses payable, $528,325.40. Paid commissions to La Economica Agencias, S.A., Havana, Cuba, and the same day $272,000; paid commissions to Exportadores Fernandina, S.A., Havana, Cuba.

[9140] I want to talk for a moment about the obtaining of those drafts. You remember Mr. Klein obtained those drafts from the Royal Bank of Canada, and according to him he obtained them in those corporate names at the request of the individuals. Mr. Koerner did not want his in his name because he was afraid Mr. Jacobs would find out about it. Mr. Alprin's was made out to Economica Agencias, I think it is.

I submit to you, ladies and gentlemen, that the reason those checks were made out in that way was because Hyman Klein did not want those drafts negotiated until he gave the word, because we have

seen that by this time Alprin, Haas—even Haas had been bought for $35,000. Isn't that a delightful experience for an accountant to have?

Mr. Haas got $35,000. "We may go into business or I will lend it to you."

And at that point you know Haas had done very little. He had done practically nothing.

Don't you see that same pattern? Here is the man who was going to take care of Klein's tax return, and a year before he gives him a check for $35,000 for really doing practically nothing at [9141] that point. "I expected him to work it off, it was a loan."

However, of course, you know it was not a loan, or, if it was a loan, it was handled very, very peculiarly because it does not appear on the books here as a loan at all.

"Accrued commissions and expenses payable," I am reading from page 17 of the exhibit, "Paid commissions Compania Comercial La Ribera, S. A., Havana, Cuba."

And the interesting thing about that is if it was a loan there was a loans account on this book. You will remember that Mr. Klein had loaned Ellis Rosenberg some money.

I want to find that entry, if you will just bear with me one moment.

Here it is, I am sorry to have been delayed.

March 18, 1946, loans receivable, $15,000. Cash, New York account Royal Bank, $15,000. And here is the explanatory note: "Loaned to Ellis Rosen-

berg. Covered by demand note at 2 per cent interest per annum."

Ellis Rosenberg. You sort of get the picture of Damon and Pythias, Klein and Rosenberg, [9142] and he lends Rosenberg $15,000, covered by a demand note at 2 per cent interest per annum.

There is nothing wrong about that. There is not a thing wrong about covering a loan of $15,000 even from Damon to Pythias with a note. However, don't come in and tell this Court and jury that you loaned a man you knew maybe six months $35,000 without a scrap of paper to show for it because you thought he was going to work it off.

That is an outright lie.

Can you conceive of anybody working it off faster than Ellis Rosenberg, the man who made his Cuban trips, the man who was with him on his Canadian trip? His is shown as a loan. Don't come in here now, Mr. Klein, and tell us that Haas's was a loan and that Rokoff must have made some mistake in entering it this way. I think the way people get blamed for what Mr. Klein cannot explain is shameful. There is Rokoff, in the case of the books. "My lawyers told me to do it. My accountant told me to do it. Poor old me, I am just the victim of all these people who are conspiring against me."

I say to you, ladies and gentlemen, that is not so, and the facts you have heard in this [9143] case prove to you that that is not so. And when

Mr. Klein told you that that $35,000 paid to Rosenberg was a loan, that was a deliberate, a deliberate lie.

The Court: You did not mean paid to Rosenberg.

Mr. Bauman: I am sorry; paid to Haas.

The Court: I think we are all getting tired. We will adjourn until two-fifteen.

(Adjourned until 2.15 p.m.)

[9144] AFTERNOON SESSION

(Trial resumed; jury present.)

Mr. Bauman: Along about now, ladies and gentlemen, we come to January of 1947, when Mr. Klein took his money out of the Harwood deal.

You remember that was done in the following manner: Continental bought his Waldorf stock; Regan Potter bought his Seaboard stock; and Cameron Stuart bought his Regan Potter stock in various amounts, totaling $4,710,386.77.

Mr. Klein drew checks on all of these three corporations payable to his own order and he had his money.

Mr. Klein has claimed to you that he paid $375,000 for Tivoli, a corporation, by the way, which I think I indicated this morning there is every reason to believe from the evidence in this case, he owned all along.

If Mr. Klein paid $375,000 for Tivoli, this means that either his profit was not $4,710,000 but $5,085,000, or he owned Tivoli all along, that he paid nothing for it and that he lied to the Treasury Department when he told the Treasury Department that [9145] he had paid $375,000 for it, and that he lied to you ladies and gentlemen when he told you that.

At some time before February 24, 1947, Mr. Roer transferred La Ribera to Haas, and I say sometime before February 24, because that is the date, as I recollect it, of the check for $35,000 which was drawn to the order of La Ribera.

And I have talked with you about the fact that I believe that Mr. Klein lied to you about the transfer of that money, but I would like to talk with you a little bit about the transfer of the La Ribera corporation.

The testimony is pretty clear and the facts before you are pretty clear to the effect that Klein said that he would have Roer transfer one of his corporations to Haas.

As a matter of fact, even Mr. Klein said that he may have—may have told Mr. Roer to transfer one of his corporations to Mr. Haas and, really, I didn't expect Mr. Klein to go any further.

And I think you can find from that answer that that is about as close as Mr. Klein is going to get to admitting anything.

But even Mr. Klein says "I may have told him [9146] to do that," and Roer did transfer the cor-

poration to Haas. Haas paid Roer $800 for the corporation. Do you remember Mr. Haas' testimony? He paid it to him in cash. Why did he pay it to him in cash? Because Mr. Roer wanted it that way.

I well venture to say Mr. Haas wanted it that way, too, because if he paid him by check, then, you see, there is a check of Mr. Haas or of Haas, Schlesinger & Mayers in the amount of $800 paid to Mr. Roer, and there is a record for Internal Revenue to see, if they want to see it, that this corporation was actually transferred from Roer to Haas.

But, no, pay him $800 in cash because Roer wants it that way and also, I submit, because it leaves no traces; it leaves no footmarks.

When Mr. Haas came to collect his share of the $800 from his partners, according to his own story, he collected that in cash. I submit that a certified public accountant and an attorney, but particularly a certified public accountant, a man who keeps books and records, whose job it is to preserve records of transactions, knows better than that, and when he does it, he does it for the purpose of concealment.

[9147] I submit to you when he paid Roer the $800 in cash and when he got over $200 apiece from his partners in cash, that his purpose was one of concealment.

Just as Klein wanted all the facts with relation to Tivoli swept under the rug, Haas wanted all the facts with relation to Ribera swept under the rug, because when you leave traces, Internal Revenue can

come to you and present you with that check: "Mr. Haas, your check for $800 to Mr. Roer. Tell us all about that." And Mr. Haas didn't want to answer questions about that, if it could be avoided.

Haas said that Klein told him to deposit that money up in Toronto. The fact is that it was deposited in Toronto, I think for a very good reason. Certainly it wasn't going to be deposited in New York where it would be immediately accessible to the New York Revenue authorities. Certainly he wasn't going to deposit it in Montreal, because there were too many of Klein's corporations with bank accounts in Montreal. And so the easiest thing to do was to take his draft for $35,000, take it out of the country where the Revenue Service [9148] couldn't get at it, deposit it in a Spanish name in Toronto, not even the city where Klein's corporations were, and that was as good as Mr. Haas could conceive and as Mr. Alprin could conceive at that particular time of burying that money, and it wasn't bad; it wasn't bad.

We will come to the holding of these drafts and a lot of facts and circumstances with relation to that subpoena, for instance of Revenue, which was dated in March, 1947, I believe—no, no, later in 1947—with the names of three of Mr. Alprin's corporations on it. I will tell you what I suggest or what the Government suggests that impelled Mr. Alprin to do when the funds were unfrozen.

But in early 1947 Mr. Klein is using Mr. Haas' office as his New York office. That month, of course,

was a very busy month for Mr. Klein. It was a busy month for Haas, Alprin, Koerner, Roer, Rokoff and Rosenberg.

First of all, in mid-March Mr. Haas prepared Mr. Klein's 1947 estimate. And when Mr. Haas took the witness stand here and told you that he didn't know any of the facts of Mr. Klein's sellout until 1948, when he prepared the return, he was [9149] pretty quick to reverse that when I pointed out to him on cross examination that he obviously knew the facts of Mr. Klein's sellout in March 1947 when he prepared Mr. Klein's estimate, because the figure on the estimate was within $8,000, you remember, of the total amount that Mr. Klein reported.

Mr. Haas, I think, substantially agreed that he did know, in connection with the preparation of the estimate, that Mr. Klein received approximately $4,700,000.

On March 27th, according to Mr. Klein, he was in Canada obtaining these three drafts, and on that day he told you the operations of Tivoli came to an end. I don't know what operations; he was the one who told you it never did operate in effect. And you will remember he said that Hannes offered Tivoli 15,000 shares of its stock for 2850 shares of Tivoli stock, which was just a case of Hyman Klein offering Hyman Klein Hannes for Tivoli. And that, too, was another step away from Tivoli.

He said to you, "Maybe I just liked the name Hannes better." You bet he liked the name Hannes

better. He wanted to forget, I think at that point, that he had ever heard the name Tivoli.

[9150] Before that he says he told Roer, Alprin and Koerner that drafts were going to be issued to them in accordance with the terms of the agreement. You have heard the testimony, that he didn't remember the exact basis for payment, but that is neither here nor there. What he did do was have Alprin's draft made out to La Economica, he had Roer's draft made out to Fernandina, and he had Koerner's draft made out to Economica.

Why were bank drafts used instead of checks? For one thing, a bank draft can be held an awful lot longer than a check without any problems being created. You heard Mr. Klein say something about five years.

You walk up to a bank with a check five years old and try to cash it and you have got a problem. But a bank draft can be held for a substantial period of time.

I submit that when Mr. Klein got those bank drafts he knew that they were going to be held for substantial periods of time; and, of course, another reason is that if I write a check on my account and it is cashed, it clears my bank and comes back to me, and the Internal Revenue Service can come up to me [9151] and say, "Mr. Bauman, your check thus and so, who got the money? Who is La Economica? Who is Exportadora Fernandina?" and I have got to take a position.

But, on the other hand, if I buy three drafts and my books show an expenditure in the amount neces-

sary to buy the three drafts, first of all, my books aren't public; they aren't published in The New York Times. Maybe they are in Canada, maybe they are in Baltimore, maybe they are in New York and maybe they are in Havana.

[9152] But if you buy bank drafts and I give them to people and they cash bank drafts, that doesn't come back to me; that goes back to the bank, and what bank? the Royal Bank of Canada.

Just putting distance between himself and the transaction all the time.

Now, Haas knew about this and Alprin knew about it. Alprin spoke to Haas about it in April or May of 1947, and you remember Mr. Haas's statement read into evidence in this court wherein Mr. Haas said that Alprin had said that Klein didn't trust Koerner. Alprin wouldn't say that on the stand, but why didn't Klein trust Koerner? He didn't trust him to hold the draft. He was afraid that Mr. Koerner was going to take that draft and cash it, instructions or no instructions, and Mr. Klein didn't want it cashed, and so he gave it to Mr. Alprin, whom he trusted, knowing that he would hold it until Mr. Klein released it.

Then Mr. Haas and Mr. Alprin went up to Canada together. They went up to Toronto.

And you remember the testimony that Mr. Klein suggested that Mr. Haas might be helpful to Mr. Alprin in opening an account in Toronto. Mr. Alprin said that opening the two others was his own idea.

[9153] And of course that is even better than having it in one account because now you are hiding behind three Spanish names in Canada and he claimed for some reason that he thought there might be some provisions of a federal deposit or something like our Federal Deposit Insurance Corporation existing in Canada, but when I asked him, "Did you ask the bank man whether there was such insurance in Canada?" no, he didn't.

And I ask you believe that that was not so. I ask you to believe that that was Alprin's way of just trying to make the tracing of this money by Revenue harder.

Now maybe he didn't succeed at that particular point but it wasn't because he didn't try. And that was his reason, not this federal deposit theory, for breaking it up into three.

Then there were a lot of phone calls. Koerner wanted his money. Well, I think anybody would want his $264,000 because on a rough calculation, $264,000 at even 2 percent is something like a $100 a week, and Koerner wanted his money. Of course he did. And Klein says that Koerner called him about the money, telling him that he couldn't get Alprin to release it.

[9154] Well, of course he couldn't get Alprin to release it because Klein wouldn't tell Alprin to release it, and shortly after the Alprin draft was deposited in Toronto, you remember the Canadian Government froze these funds.

I want to trace this with you pretty carefully because to me it is important. At that point there

was $264,000 which the Canadian Government had frozen. Roer had his draft undeposited, unavailable. Nobody knows where that draft was. Alprin had Koerner's draft, and you will remember that Alprin said that he kept that draft in his safe for a while and then he took it down to a safe deposit box and every so often he would take Koerner down to the safe deposit box and show it to him. So that $264,000 draft of Koerner's was hidden from the view and investigation of the United States Treasury Department.

I want to take these three drafts. In 1949 these drafts, or at least Alprin's draft, was released, or Alprin's funds were released. You remember the testimony of both Haas and Alprin that Mr. Klein employed counsel to get this money released, so that when the money is released in 1949, Mr. Alprin isn't going to take a chance like that, of getting that [9155] $264,000 frozen or found or attached or anything else, and he has the whole thing accumu' .ed into one draft of $264,000. This is his own.

Back he comes to New York, puts his draft in the safe, and then later, into a safety deposit box, so that after the release of Alprin's draft you have $800,000 hidden from the sight of the Treasury Department, and I submit to you, ladies and gentlemen, that that is why it was hidden, so that it would be out of the sight of the Treasury Department, and I want to come to that subpoena which had the names of those three corporations.

Do you think for one moment that Alprin didn't know that Klein had received the subpoena listing three corporations of Alprin's? Of course he did. And so, when he got that money in 1949 he was not going to take any more chances with it.

Put it in the vault. Hide it away somewhere. Nobody will freeze it. Nobody will attach it and nobody will ask any questions about it because they won't know where it is.

Now why? Why were these drafts held? I want to read two questions and answers from the statement of Mr. Roer which was received in evidence.

[9156] "Q. Did Mr. Klein say to you at the time that he gave you this draft in 1947 the reason why you should hold the draft? A. He mentioned something about having a little trouble on his income tax and that as soon as he gets that straightened out he would want me to deposit it."

And by Mr. McCarthy:

"Q. What do you mean he said he was having a little trouble with his income tax? Did he elaborate? A. No. He said he was having some difficulty with the income tax, to hold the check until he gets cleaned up and then he will advise me when to deposit it."

Mr. Alprin told you substantially that story on the witness stand, and isn't that the fact? Mr. Klein was having a little trouble with his income tax. "Take the $800,000, put it out of sight. Hide it away until I get my troubles with the income tax cleaned up."

And if that is true—and you have no reason to disbelieve that—you have no reason to disbelieve that—there can be no question that Mr. Klein's sole purpose in burying that $800,000 was to confound, confuse and impede, and all the rest of the charges made, [9157] the Revenue Service.

Mr. Kiendl says after all, you can't expect Mr. Klein to come in and say "I did this because I knew the Revenue Service was on my trail and I didn't want them to find out about this money." However, he comes as close as he can without saying that by saying that he might have said, "Don't be in a hurry to cash them on account of the OPA."

What do you mean "might have said"? Might have said "Don't cash $800,000?" So that you have, it seems to me, a practical admission from Mr. Klein that these drafts were held pursuant to his instructions and because of his difficulties.

He tells you OPA difficulties. I say to you not OPA difficulties, income tax difficulties.

Now let us follow those drafts a little further. In 1949 they go underground and they stay underground for a considerable period of time until apparently Mr. Koerner raised so much Cain about the fact that he couldn't get his $264,000, I gather Mr. Alprin couldn't contain him any more. He went out and got himself a lawyer. I think there is some testimony he threatened to sue. Hyman H. Klein did not want any lawsuits in the courts about the proceeds [9158] of the Harwood Whiskey deal, so they arranged this escrow deal.

Now when I as a lawyer hold money in escrow, I hold it in trust for the persons whose money it actually is. It is not mine. I am just holding it for someone. I say to you that if Mr. Haas did not want to confound the Revenue Service, and he knows this, his lawyer talked about his Treasury card, he would have taken that draft for $264,000, opened up an escrow account in the bank and deposited the draft in the bank. That is a way of holding escrow money. There is the account, it is earmarked, you don't commingle funds, and you hold it until the condition upon which it is being held eventuates and then you release it. Mr. Haas knows that.

When Mr. Haas decided instead of holding that money in a bank account in escrow, he did it in furtherance of Mr. Klein's purpose of covering up, of throwing the Revenue Service off the track and of keeping that money underground as long as he could.

Now a draft isn't cash. I want to make that perfectly clear. But I say to you that what Mr. Haas did in holding that $264,000 in a safety deposit box was just about the equivalent of taking $264,000 in cash [9159] and putting it into a safety deposit box.

I say to you that in the light of Mr. Haas' experience as a lawyer and as a certified public accountant, that he knew better, and that when he did what he did, he did it for an evil purpose. He did it for the evil purpose of throwing the Revenue Service off the track in support of his then boss, Hyman H. Klein.

There has been a lot of talk about the jeopardy assessments and I want to say something about them. The statement was made that the jeopardy assessments were the start. Of course they were.

Mr. Klein's exhibits show the Treasury Department was looking into this well in advance of the jeopardy assessments. My recollection is June 1947 or thereabouts, and the jeopardy assessments were not filed until the following year.

Nine months after those subpoenas had been served, the Revenue Service issued jeopardy assessments to protect its interests, and having the facts of this case that you ladies and gentlemen have before you, knowing what you know about what happened to the proceeds of these $800,000, the rewriting of the books, [9160] the fact that every block they could think of was thrown in the way of the Revenue Service, wasn't that an alert and an intelligent thing for the Revenue Service to have done? I make no apology for that. I think that Mr. Hyman Klein and his associates earned those jeopardy assessments and deserved them every bit.

What was Mr. Klein's interest in this matter? Well, you have heard testimony that Mr. Klein said to Haas that he was attempting to negotiate a settlement that would include Alprin and Koerner. Why? To be a nice fellow, or because those three drafts were still being held pursuant to his orders and direction?

Furthermore, Mr. Haas said that Klein told him that it would be a good thing, it was a good thing

that these drafts were being held because if Klein had to pay the tax, he could get the money back. In Mr. Alprin's second statement on page 8, you will find the following question and answer:

"Q. You weren't holding this money for Mr. Klein, were you? A. I was holding it pursuant to his direction."

I say to you that during that period any direction that Mr. Klein gave Mr. Alprin, any [9161] direction that he gave Mr. Haas, the two of them would have been perfectly delighted to comply with it. The money was held pursuant to his direction, and what was done with that $800,000 was done pursuant to his direction and his purpose throughout was one of confounding the Treasury Department.

The Court: May I interrupt merely to remind you that the combination of Mr. Haas and Mr. Alprin did not hold $800,000.

Mr. Bauman: You are right, absolutely right, your Honor. I should have said $528,000.

It is curious thing, is it not, that when the time comes for this check of Koerner's to go underground and be held in escrow in a safety deposit box, that Mr. Alprin calls Mr. Klein and they agree that Mr. Haas and his partner and Mr. Koerner's lawyer and presumably his partner, are going to hold this draft underground. It is a very interesting thing to me that Morris Alprin apparently did not want to be any party to the holding of this draft underground because that did not look right.

I submit to you that the reason that Morris Alprin was not an escrowee with Maurice Haas was because he knew as a lawyer that it did not look right [9162] to be holding a draft, to my mind the equivalent of cash, in escrow in the amount of $264,000 at a time when Mr. Alprin knew that the Internal Revenue Service was very much looking into these very funds. Mr. Alprin was not about to put his signature on a piece of paper that would tie him in any way direct or indirect to the submerging of this money.

Well, these funds were finally released, there was that classic discussion about "get a good tax man," in which Mr. Alprin said that Mr. Klein said, "I can't talk on the telephone," and Mr. Klein said, Mr. Alprin said, "I am going to report it as a capital gain and it was in that connection that I told him to get himself a good tax man."

However, in any event, I think it is perfectly clear that Hyman Klein must have known that not only Morris Alprin was going to report this as a capital gain, because you have too amazing a coincidence here, you have Hyman Klein reporting his as a capital gain, you have Maurice Haas reporting his as a capital gain, you have Koerner reporting his in the same way, Roer in the same way, Alprin in the same way.

I submit to you, ladies and gentlemen, that there is just too much of a coincidence for that to have [9163] happened without the knowledge and approval of Hyman Klein.

I say that to you in light of the relationship which I discussed with you this morning that went back over the years to 1944, that went back to the $37,500 to Alprin, the $37,500 to Koerner, the $35,000 to Haas. These people were his, and I submit that you can find and must find that whatever they did with this money was done with the knowledge and approval of the man whom they thought would make all of them millionaires, and that no matter what he asked them to do in furtherance of impeding the Revenue Service, no matter what it was, they did and did willingly.

However, I got a little ahead of my story. I have Government's Exhibit 356 which is Mr. Klein's return for 1947.

[9164] Now that return contains two riders of interest: one, "The Collector has levied on all of the taxpayer's funds, and for that reason he is unable to pay the balance due shown by this tax return," and that balance due is $8,152.98. ". . . unable to pay the balance due shown by this tax return"—that at a time when Mr. Klein told you on the witness stand he had $2 million in certificates of indebtedness, but he couldn't pay the $8,000, he was unable to pay the balance due as shown by that report.

Then you come to the schedule of capital gains which you ladies and gentlemen remember, and I am not going to read it to you, and you see that the sales price of his Regan Potter stock, as he has it recorded here, was $978,132.90.

Now Mr. Riordan, one of the assistants involved in this case with me, did a little arithmetic for me this morning, and I should like to see if I can do it with you.

I have Government's Exhibit 371, which is those consolidated balance sheets, and I am holding the one which is headed Combined Balance Sheets as at December 31, 1946, and you see the total of $5,412,531.61 [9165] as the total assets of Regan Potter according to this combined balance sheet, and this is the arithmetic that Mr. Riordan did for me this morning.

If you deduct from that $5.4 million net worth the $1.5 million which has been the subject of those entries in those books, you get a figure of $3,912,-531.61, and if you divide that in four—because Mr. Klein was a one-quarter owner of Regan Potter —you find that without that $1.5 million, one-quarter of the remaining balance is $978,132.90, which is precisely the amount he said—precisely the amount he reported on his return.

Now what does the Government contend is the significance of that? The Government contends that the significance of that is that if that return correctly stated his one-quarter share of Regan Potter, then his story about the $375,000 payment for Tivoli is an outright lie, because there never was such a payment of $375,000, and Tivoli was Hyman Klein's to do with as he pleased and that these books again were rewritten to cover what happened, but when the time came for Hyman Klein to receive his share

of Regan Potter, it was figured without the $1.5 million which they claimed was a loan receivable from Tivoli.

[9166] Now I want to be fair about this, and I want to say to you that it had to be figured that way because according to the Regan Potter books, Regan Potter, and that is Miss Bennett's handwriting, "Expended $1.5 million for commissions paid."

Now that was dated April 3rd. Klein had sold out in January, around January 20th. The corporations were defunct after that. So that if that sum were paid as commissions it quite obviously was owed during the operation of Regan Potter and was paid based upon its operations, and if that were the fact, then the asset of $1.5 million from Tivoli never really existed.

This may be a little difficult to follow, but I have tried to explain it in the clearest way I know how, and what I submit it comes down to is that in computing Hyman Klein's share of Regan Potter there was never any asset of Regan Potter's of $1.5 million because it doesn't show in the sales price, in his return, $375,000 doesn't show there, and that Hyman Klein's return—I beg your pardon—and that Hyman Klein's statement that he paid $375,000 for Tivoli, a corporation in which he never had any stock, a corporation which he owned and manipulated and accumulated [9167] money, was his all the time, and that this whole concoction, as I have argued to you this morning, was simply and solely to impede the Revenue Service in its investigation.

The Court: I am tempted nevertheless, in view of the fact that Mr. Bauman has undertaken in summation to do arithmetic, which is quite proper, but leaves certain inferences which the defendants have no opportunity to answer, to also remind you that if you take the figure of $1.5 million and you divide it by four you get exactly $375,000.

Mr. Bauman: That is precisely right.

The Court: All right. You may continue.

Mr. Bauman: That is precisely right, but there is no indication that Mr. Klein's share of Regan Potter, according to his own statement, was anything more than one-quarter of the assets without the $1.5 million.

The Court: And I remind you again, and it has been quoted here, that Mr. Klein is not on trial for attempting to evade income taxes. That was thrown out weeks and weeks ago.

I would suggest, Mr. Bauman, that if we are to continue the very placid and desirable atmosphere [9168] in which these summations have continued, that you proceed to your next point.

Mr. Bauman: Now what did these defendants get out of it? Well, I think it is perfectly clear what Roer, Koerner and Alprin got out of it.

Mr. Koerner, $272,000; Alprin $264,000 plus $37,500 plus——

The Court: I think you have the figures wrong. Koerner didn't get $272,000, Roer did.

Mr. Bauman: Thank you, Judge.

Roer got $272,000; Koerner got $264,000; Alprin—and by the way, when I say Roer got that, he also got, of course, commissions from R. C. Williams. Alprin got $264 plus $37.5 plus the legal fees at 60 cents a case—even Rokoff got $22,500 of it, and a position during the years with a so-called defunct corporation.

But let us not forget what Haas got out of this, either. Haas got $35,000 of money for La Ribera. Haas's firm got $25,000 in 1951. Haas got $25,000 in 1954 or early 1955, which totals to $85,000. And when Haas got that last $25,000, Haas felt that he had rendered services worth $100,000 and in addition to the $85,000 that Haas got, there were other audit [9169] fees for other corporations which Mr. Haas couldn't remember.

Now I questioned Mr. Klein about the interrogatories and his answers to the interrogatories which were read and sworn to by Mr. Klein. I asked him if he read them. He said yes, he swore to them. There is no question about that.

But he said at page 7693 that "They were predicated on settlement discussions or settlement discussion which was then coming on with the United States Government and had nothing to do with my giving a statement to the Bureau of Internal Revenue for any other purpose."

I want to read that again. His answers to those questions which the Internal Revenue Service asked him were predicated "on settlement discussions and had nothing to do"—and I am skipping a few

words—"with my giving a statement to the Bureau of Internal Revenue for any other purpose."

Well, ladies and gentlemen, that is what we are talking about here. We are talking about a conspiracy to impede the Treasury Department in the collection of revenue, and I don't understand because Mr. Klein, I think, repeated that several times, whether [9170] it is Mr. Klein's position that you have two sets of answers, one for a settlement discussion and one for some other purpose.

It seems to me that the answer to any question, whether it is for settlement or for any other purpose, must be the truthful answer. That is the answer that the Treasury Department is entitled to. That is the answer that you and I owe our Government, the truthful answer. That is the answer that Mr. Klein owed his government, a truthful answer, regardless of whether it was predicated on the settlement discussion or an investigation of Internal Revenue for any other purpose.

There were these questions and answers made by Mr. Klein:

"Q. Were you asked this question and did you make this answer at page 5223 of the minutes? A. Are you referring——

"Q. Wait till I ask the question. A. I'm sorry.

"Q. 'Why was payment made to this Compania Comercial La Ribera, S. A.? A. I don't know whether it was a payment or a loan or what it was

If it was charged to expenses [9171] obviously—frankly, at this time I don't know. See, in the light of this here as it now appears, you ask me a question when going back, in dealing with a foreign country who is going to ask questions as——'

"Q. And then Mr. McCarthy asked you another question. Now in 1952 was it your recollection that you did not know whether it was a payment or a loan or what it was when you answered that question of the Revenue Service? A. Mr. Bauman, when I was called up to the Revenue Service to answer the interrogatories at that time it was in relation to a settlement of my tax affairs with the Government. Now I was presumed to be answering questions of my own affairs, not the affairs of someone else. Consequently, when he started going into matters unrelated to my taxes, I just didn't recall. I wasn't in a position to recall. I heard many things in the courtroom since April 4th of this year that I completely forgot."

But the part of that answer that I want to call to your attention is—"I went down there"—in effect, and I am now not reading—"I went down there to talk about my tax affairs and when it got beyond that, consequently when he started going into matters [9172] unrelated to my taxes, I just didn't recall. I wasn't in a position to recall."

Now I submit that when the Internal Revenue Service asks you questions with relation to anybody, if you are going to answer, you must answer truthfully. You have certain privileges and you have certain safeguards, but if you undertake to answer,

whether it be in a settlement discussion, whether it be in relation to your taxes or anybody else's, you must answer truthfully, and Mr. Klein must have answered truthfully if he did not want to be indicted and charged with the crime of conspiracy to impede the Government in the collection of its revenues.

Then there was his interrogatory with relation to the duplicate sets of books, and Mr. Klein's answer to that one was that he did not regard memorandum sets of books as duplicate sets of books.

It seems to me that if you have two sets of books and the Government asks you about duplicate sets of books, and those two books, those two sets of books are alike in every particular, that you owe the Government an answer to that question, to tell them about it. However, that was another step the Government submits in Mr. Klein's attempt to impede and interfere and [9173] obstruct the Treasury Department in the collection of revenues.

Mr. Haas was there when these interrogatories were being prepared. As he said, he put an oar in. He told you that he knew that Klein had not divulged the names of the recipients of the drafts of Economica and Fernandina. Of course he would have to know that if he were sitting in on the conference where the answers to those interrogatories were drafted. I say that Haas's participation in the drafting of those answers, which were calculated to mislead the Internal Revenue Service, his admission of his participation in those answers comes very, very close under all the circumstances to an admission of his own guilt.

Put an oar in. When these answers were drafted —here is one I wanted to read to you. I am going to read a few pages because I think this is extremely important, I am reading from page 7809 of the record:

"Q. What was the nature"—I am questioning Mr. Klein here—"What was the nature and the amount of the funds paid over by Tivoli to Nancy Trading"—I was reading from an interrogatory—"by Tivoli to [9174] Nancy Trading, Compania Comercial La Ribera, La Economica Agencias and Compania Exportadora Fernandina? A. These interrogatories——

"Q. What was your answer to that, Mr. Klein? A. 'Taxpayer is not in a position to answer these four questions.'"

I will repeat that:

"Q. 'What was the nature and amount of the funds paid over by Tivoli to Nancy Trading, Compania Comercial La Ribera, La Economica Agencias, Compania Exportadora Fernandina?' A. 'Taxpayer is not in a position to answer these four questions,'" says Mr. Klein.

Then I read on:

"'He states, however, definitely and unequivocally'—well, then it goes on to explain what you just read.

"Q. Mr. Klein, when you made that answer— A. Please, Mr. Bauman,

"Q. I will give you a chance in just a moment, if you will answer my question. A. All right, sir.

"Q. At the time you said you were not in a position to state the nature and the amount of funds [9175] paid by Tivoli to La Ribera, Economica Agencias and Fernandina, you knew perfectly well, one, the nature of the funds paid by Tivoli and two, the amount of the funds paid by Tivoli, didn't you? A. Yes, but these interrogatories were prepared in 1949. March the 3rd, 1948 I was hit with a jeopardy assessment demanding $7,000,000. Mr. Bauman, I wasn't interested in anybody's inquiry about anybody else's taxes. I was very, very much concerned about my own taxes, and I was going to answer questions till the cows came home as far as I was concerned, as long as it applied to my income taxes.

"Q. And so, Mr. Klein, you deliberately lied to the Revenue Service when you said you were not in a position to give the information that you knew you well had from March 1947 and before that; you deliberately lied to the Revenue Service; is that right, Mr. Klein? A. Well, that is a rather strong word but——

"Q. Isn't it the fact? A. But you must include, then, two—three members of the bar, two who are highly respected [9176] members of the New York Bar, and one who is now dead, sir.

"Q. I am asking you, Mr. Klein, because you were the one who swore to these—— A. But these——

"Q. Just a moment, please. Excuse me. A. I am sorry.

"Q. You then deliberately lied in your answer in that interrogatory, isn't that right? A. I wouldn't say I lied, sir.

"Q. You just didn't tell the truth? A. I just didn't answer it, sir."

But that isn't the fact, is it? "Taxpayer is not in a position to know." Something that Mr. Klein well knew and knowingly misrepresented.

I have so many of these cards that I am at last getting into difficulty.

The Court: Shall we recess now or do you want to finish your point, Mr. Bauman?

Mr. Bauman: I would like to finish my point, your Honor.

That is why after that answer "Taxpayer is not in a position to know," I was rather amused with Mr. Kiendl's summation, and I am going to read page [9177] 8886: "Mr. Klein knew if Mr. Rokoff didn't know, Mr. Klein well knew that if an Internal Revenue agent saw an entry of that kind in a book, all he had to do was to ask about it and get the information, $800,000—if he inquired: what is this Economica corporation, what is this Fernandina corporation, who are the stockholders, who had any interest in it, eventually it would be no trouble at all for an income tax collector to find out what all the entries meant, what it was all about."

Mr. Kiendl apparently forgot when he said that, "all he had to do was to ask," that the Revenue Service did ask about that precise point, and what was the answer, what was the answer that the Revenue Service got? It got the answer: "Taxpayer is not in a position to know," in effect, who the recipients of these drafts were. That was an outright lie, outright lie in furtherance of Klein's purpose of impeding the Revenue Service in attempting to track down this $800,000.

And that does finish my point, your Honor.

The Court: Fifteen minutes.

(A recess was taken.)

[9178] Mr. Bauman: Ladies and gentlemen, my severest critics have called to my attention that I made a statement that I want to correct to you, and I shall do it right now. I think I said——

The Court: Excuse me, I can't resist saying you are very fortunate. My severest critic is my wife, and I don't expect that Mrs. Bauman is here calling your attention to anything.

Mr. Bauman: Well, she hasn't, but these gentlemen have. And that is that I said to you that Mr. Roer said that he was holding that draft because Mr. Klein wanted to get—until he was cleared of his income tax difficulties, you remember that. That part of it I think was correct, and that isn't what they called to my attention.

I think I said that Alprin also said that here. Now if I said that I want to correct that, because I don't want to leave you with any impression that isn't so. As a matter of fact, I did ask Mr. Alprin this question:

"Q. Well, did Mr. Klein tell you that he did not want you to use your draft because he was having tax troubles and was trying to make a tax settlement with the Internal Revenue [9179] Service on behalf of all of the corporations? A. I don't remember Mr. Klein saying that. I remember a discussion with Mr. Rosenberg about a proposed settlement by Mr. Klein," etc.

In other words, in that answer, Mr. Alprin told me that he did not remember any discussion with Mr. Klein about holding his draft until after the tax problems were settled. But before that, and just on the page before that, in the record, I had asked Mr. Alprin these questions, and he had made these answers:

"Q. Let me ask you, sir, whether you were asked these questions in the grand jury and whether you made these answers:

" 'Q. Didn't you press to get the money? A. I certainly did.

" 'Q. Didn't you press hard until, to find out why you did not get the sum of money, the use of it alone would be of value? A. Mr. Klein told me he was having tax troubles and was trying to make a settlement with the Tax Department in which all the corporations would be included in the settlement, otherwise he couldn't release.

[9180] " 'Q. When did he first tell you he was having tax troubles? A. I think it was somewhat after the jeopardy assessment was placed against him. It was in 1948 or sometime thereafter, I don't remember.' "

Then I turned to Mr. Alprin and I said:

"Were you asked those questions and did you make those answers?"

And Mr. Alprin said to me:

"I have no recollection of those specific questions. I think there was a general area of examination with respect to that."

Now I just did not knowingly want to leave you with a mistaken impression based on what I have said, and I have read the record to you.

I have decided in your interest to eliminate some of these cards, and I must, however, comment for a moment on something Mr. Kiendl said.

"We must bear in mind," said Mr. Kiendl in his closing, "that the Government has absolute power, absolute power by subpoena, by compulsion, to make every taxpayer, corporate, individual, partnership, divulge anything that pertains to their income [9181] tax returns in full."

But I submit to you, ladies and gentlemen, that there is no power on this earth that can make Hyman Klein, Maurice Haas and Morris Alprin tell the truth. You can issue them subpoenas. You can ask them questions. But there is no power that can make these people tell the truth if they don't want to.

Now, we come to the end of a very long, very long case, and on Monday his Honor is going to sub-

mit it to you for your determination. I think you will find there are three different hypotheses, three different conclusions you might come to arising out of the evidence in this case.

And before I tell you that, I want to tell you that you are here to determine not whether there are any taxes due or owing or any of the rest of that, as I told you at the start of my summation, but whether in fact a conspiracy existed among these defendants and others to impede the Revenue Service or the Treasury Department in the collection of its revenues. That is the narrow question before you.

[9182] In turning that question over in your mind, there are three hypotheses or three ways of looking at this thing: You can find that these funds were a liquidating dividend due Koerner, Alprin and Roer. If you come to that conclusion, you can find that Klein and Rokoff, the co-conspirator, conspired to mislabel the books of Tivoli by calling them accrued commissions and expenses.

Or you can find that the funds were ordinary income, that they were no liquidating dividend, and that all the defendants were engaged in a conspiracy to misbrand the funds in Roer's 1950 return, in Koerner's 1952 return and in Alprin's 1952 return.

Or you can find that this was neither a liquidating dividend nor income to Koerner, Alprin and Roer, because it might have been given to them for a purpose other than that claimed by either side to this controversy, and that it was to be given the appearance of a legitimate expenditure until the conclusion of Klein's income tax difficulties, after which

it would be disposed of in some manner to be determined by the parties.

But no matter what approach you take, [9183] I have gone through, I have attempted to the best of my ability to trace the facts of this case, as I said I would this morning, from the beginning to the end, because when you come to your conclusion, I wanted you to have an effort made, I wanted to make the effort to tell you what this case was about from its inception until its end.

I have done the very best I can to talk about all of the facts as chronologically as I could so that you could have them in context, during the period of the conspiracy.

I think that you must have come to the conclusion, because I think it is irresistible on those facts that each and every one of these defendants was in a criminal conspiracy to impede the Revenue Service, to interfere with the Revenue Service, to obstruct the Revenue Service, to do everything they could, everything they could, and what Hyman Klein wanted them to do they willingly did, to confound the Treasury Department of the United States.

Now, ladies and gentlemen, a conspiracy to impede the Treasury Department, I don't have to tell you, is a very serious business. You can't [9184] take it lightly. None of us can.

None of us is obligated to pay one penny more than he owes. But in our system each one of us is a self assessor. We tell the Government what we think we owe. And that is made easy for most of us with the fact of withholding taxes. But it is up to us to

do what we can not to attempt to obstruct and impede the Government when it comes to us and says, "We want some more information about this. We want to trace the proceeds of the Harwood Whiskey deal. We want to trace the $800,000 that was put into three Spanish names. We want to know the facts," because when one conspires to do these things, when one conspires to obstruct or impair or interfere with the Treasury Department, I say to you in all seriousness that at that point one conspires to undermine the economic security of the United States, the economic security of the government which protects us and the economic security of the government which is entitled to our protection. He conspires to pass on to the taxpaying community the cost of overcoming the hurdles which he has set up by his efforts to mislead and impede the Treasury Department.

[9185] I am asking you to find these three defendants guilty, which is of course not a pleasant job; it never is. But I have sworn an oath to do my job and to do my duty, and you, ladies and gentlemen, have sworn an oath to do yours.

I suggest to you, ladies and gentlemen, that your duty in this case is clear, based upon the facts, you must find these defendants, each of them, guilty.

* * *

[9187] The Court: I understand defense counsel [9188] have some sort of an application.

Mr. Kiendl: Yes.

If your Honor please, I am very mindful of the fact that your Honor set a deadline for requests to charge, but in connection with that portion of the

summation for the prosecution regarding the possible predating of the letter of September 12th, we have an additional request to charge which we would like to submit.

The Court: Do you have it ready?

Mr. Kiendl: I have it ready, written out in pencil, your Honor.

The Court: I will take it.

Mr. Kiendl: Very good.

We respectfully ask the Court to charge the jury as follows:

> "In the upper right-hand side of one of the letters dated September 12, 1940, which is Exhibit 314, and which is addressed to the Royal Bank of Canada, and signed by H. H. Klein as the president of Waldorf, regarding the transfer of securities to Canada, something has been crossed out in pencil. Should you desire to ascertain more certainly what [9189] it is that has been crossed out, the Court will, at your request, in your presence, and in the presence of counsel, erase those pencil marks and thus reveal as far as possible what appears beneath them."

The Court: Denied.

* * *

[9190] New York, August 22, 1955.

Trial resumed.

(Jury not present.)

The Court: In the final editing of the charge, gentlemen, over the weekend I found it necessary

to make a few slight changes in some of the requests to charge as they were originally disposed of, and before giving the charge I should like to note those changes on the record and also for your information.

The first one is a change in Haas Request No. 26, which of course makes a plural out of a singular. You will recall, gentlemen, that that request was granted as to the first sentence. The fifth word "defendant" will be pluralized to "defendants" so that it reads "The Government and the defendants are equal before the law."

The next occurs in Alprin's request 85. That was granted as amended in the following language: [9191] "Just because seven defendants and three co-conspirators are charged in this indictment does not mean that you must find all the defendants guilty or all not guilty." In view of the context of the earlier part of the sentence, I have amended it to read as follows: "Just because seven defendants and three co-conspirators are charged in this indictment does not mean that you must find all the defendants on trial guilty or all not guilty."

The next change took place in Government's 33. Now, that was substantially amended originally so that it emerged in this form: "Before you can find any defendant guilty of the crime charged in this indictment, you must first determine from all the evidence in the case" and then I made the insertion "properly segregated as I have heretofore instructed you," and then it continues to the end, "whether a conspiracy existed as charged."

Finally, in Alprin's *22*, that was granted as amended in the following language: "The fact that a person associates with conspirators with knowledge that they contemplate doing an illegal act does not make him a co-conspirator, unless he, [9192] knowingly enters into the conspiracy and assists in the furtherance thereof. Unless the Government proves to your satisfaction and beyond a reasonable doubt that a defendant knowingly entered into the conspiracy as charged," now comes the change, and strike out "did" and substitute "that," and after the words "some act" and before the word "in" insert "was done." So that sentence reads as follows: "Unless the Government proves to your satisfaction and beyond a reasonable doubt that a defendant knowingly entered into the conspiracy as charged, and that some act was done in furtherance thereof, then it will be your duty" et cetera.

Those were the only changes.

Of course, whatever exceptions were granted to the defendants on the original rulings on the requests to charge are preserved in these amendments.

Knowing from experience how difficult it is to listen to a long charge and try to make notes of what you intend to except to, I have supplied the convenience of typewritten copies of the charge for all counsel so that you may read as I read and make [9193] your notations on your typewritten copy, and it will give you a better opportunity to preserve your rights on the record.

(Copies of charge handed to counsel.)

[9194] Charge of the Court

The Court: Ladies and Gentlemen of the Jury:

It becomes my duty as judge to instruct you concerning the law applicable to this case, and it is your duty as jurors to follow the law as I shall state it to you.

The Government exists primarily for the protection of the people in their individual rights. To attain that end, it must establish instrumentalities for protecting the people, not only in their individual and property rights, but in the enjoyment of the right and privilege of proper service in all departments of the Government. Therefore the Government may safeguard itself against conspiracies intended to impair any of the functions of the Government. It may declare it unlawful to combine for the purpose of doing any act which obstructs or interferes with the operations of Government or any of its departments. The Government may safeguard itself against being defrauded out of the right to administer an intelligent and honest service in the interests of the people. No less important than this is the regard which [9195] the law has for the safety and liberty of individuals; and this is manifest when we consider the safeguards which it throws around those who are charged with crime. It is your duty to consider at once the necessity of enforcing the laws of the country and of giving full protection to persons charged with offenses against those laws. These considerations should cause you to give most careful attention to your duties in this case to the end that, on the one hand, if the defendants be guilty as charged, these salutary laws may be enforced; and, on the other hand, that they be not found guilty unless, by proof satisfactory to the law, you shall so find them.

The function of the jury is to try the issues of fact that are presented by the allegations in the indictment filed in this court and the defendants' pleas of "Not Guilty." This duty you should perform uninfluenced by pity for the defendants, but on the other hand you must not suffer yourselves to be biased against the defendants because of the fact that they have been held to answer the charges, or because an indictment has been filed against them, or because they have been brought before [9196] the Court to stand trial. None of these facts is evidence of their guilt, and you are not permitted to infer or to speculate from any or all of them that the defendants are more likely to be guilty than innocent. Nor are you to permit passion or prejudice because of the nature of the crime charged to color or influence your deliberations. The fact that the United States of America is one of the litigants in this case also must not enter into your deliberations. The prosecution enjoys no greater dignity before you than does any defendant.

I trust that you will not handicap your free consideration of this case by any apprehension that it will be difficult for you to understand it, or to apply the facts as you find them to the law as I shall give it to you. I think that you understand the case, and, if you do not, I am sure that it will be clear to you when such additional light as is needed is given to you by this charge. You must remember that you are to look at the facts, and apply the law to them as given you by the Court, exactly as you would look at other important concerns affecting yourselves. You should approach [9197] the consideration of the whole case with a confidence that you will arrive at a conclusion satisfactory to your judgment and your conscience, precisely as you are

satisfied that you will arrive at a like conclusion in any important matter of your own, after you have given to it full and careful consideration.

There are no distinctions to be drawn in this case so fine that the ordinary mind cannot apprehend them, nor are there any mysterious processes, either of reasoning or of legal procedure, which you need fear will cloud your inquiry, or interfere with your arriving at an intelligent conclusion. The questions here are practical questions for you to decide, and all that is needed is that you give your very best attention to their consideration.

Let me impress upon you, at the outset, that each defendant in this case is presumed to be innocent until his guilt is established by proof which satisfies you, beyond a reasonable doubt, that he is guilty. This presumption abides with the defendants all through the case, unless it is removed [9198] by the proof; and every material element necessary to make up the crime of conspiracy in this case must be established by like proof, satisfying you, beyond a reasonable doubt of its existence.

The defendants on trial in this case are presumed to be innocent. This means that they are presumed to be innocent of the charge that they conspired with others to defraud the United States by impeding and obstructing the Treasury Department in the collection of income taxes. The presumption continues to operate in their behalf until it is overcome beyond a reasonable doubt by competent evidence. It attends the defendants not only throughout the trial, but also during your deliberations after the case has been submitted to you for your verdict and until you actually arrive at a verdict. The burden of overcoming this presumption

at all times rests upon the Government and never is upon the defendants. If the evidence introduced as to any defendant does not overcome this presumption of innocence to your satisfaction, to a moral certainty and beyond all reasonable doubt, you must find that defendant not guilty.

[9199] The presumption of innocence as to which you have been already instructed is not a mere formality, and may not be overcome by mere suspicion, surmise, conjecture, or speculation. Difficulty or impossibility of proof is no substitute for actuality of proof, and a defendant is presumed to be innocent and entitled to be acquitted until he is proved guilty as charged beyond a reasonable doubt. The burden of proof is upon the Government at all times to prove all of the elements of this crime beyond a reasonable doubt and that burden never shifts to the defendant.

Where the facts or circumstances proved are susceptible of two reasonable inferences, one pointing to innocence and and the other to guilt, you must adopt the inference pointing to innocence and acquit the defendant.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the Government and the defendants have a right to demand, and they do demand and expect that you [9200] will conscientiously and dispassionately consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict regardless of what the consequences of such verdict may be.

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon

the defendants, if they are convicted, to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, prejudice or sympathy, or any inferences not warranted by the facts. Nor is the amount of money claimed to be involved in the case to enter your deliberations whatsoever.

The opening and summation of counsel is not evidence and that of the United States Attorney is not [9201] entitled to any additional respect by reason of the fact that such argument is made by a Federal official.

Now, during the course of the trial I have had occasion to ask questions of some of the witnesses. The judge has the right, and, indeed, the duty, to see that facts are clearly presented, and my purpose in asking questions was to clarify certain matters in the case. Again, and I emphasize this as strongly as I know how, you are not to draw any conclusion that by my interrogation of the witnesses I have intended to convey any point of view as to the witnesses' credibility.

You are the exclusive judges of the facts and of the effect and value of the evidence, but you must determine the facts from the evidence produced here in court. If any evidence was admitted and afterwards was ordered by me to be stricken out, you must disregard entirely the matter thus stricken, and if any counsel intimated by any of his

questions that certain hinted facts were, or were not true, you must disregard any such intimation, and must not draw any inference from it. As to any statement or argument made by counsel concerning the facts in [9202] the case, you must not regard such argument or statement as evidence; provided, however, that if counsel for both parties have stipulated to any fact, you are to regard that fact as being conclusively proved; and if, in the trial, any party has admitted a fact to be true, such admission may be considered by you as evidence in the case.

If I, or either counsel, have referred to testimony, and if either my reference or that of counsel differs from your recollection of the testimony, follow your recollection. You, as I have said, are the sole judges of the facts.

The Government and the defendants are entitled to the individual opinion of each juror. It is the duty of each of you, after considering all the evidence in the case, to determine, if possible, the question of the guilt or innocence of each of the defendants. Your verdict should represent the opinion of each member of the jury and must express your personal conclusion based upon the evidence in the case. While it is the duty of each juror to confer with his fellows and to compare his views with them, no juror should acquiesce against his individual [9203] judgment in the conclusions reached by other jurors, whether the other jurors represent a majority or a minority of the jury. Each juror, having in view his duties and responsibilities should have his own mind convinced beyond a reasonable doubt before he can conscientiously consent to a verdict of guilty and no one of you may surrender his conviction of the guilt or innocence of the defendant, or of reasonable doubt of guilt merely to prevent a disagreement.

When you have reached a conclusion in that respect, you should not change it merely because one or more or all of your fellow jurors may have come to a different conclusion or merely to bring about a unanimous verdict. You should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the guilt or innocence of the accused for the mere purpose of returning a verdict or solely because the opinion of the other jurors [9204] differs from yours. However, each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be drawn therefrom. If, after doing so, any juror should be satisfied that a conclusion first reached by him was wrong, he unhesitatingly should abandon that original opinion and render his verdict according to his final decision.

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive of good for a juror, upon entering the juryroom, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if shown that it is fallacious. Remember that you are not partisans or advocates, but rather judges.

The final test of the quality of your service will lie in the verdict which you return to the Court, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial

[9205] administration if you arrive at a just and proper verdict in this case. To that end, the Court reminds you that in your deliberations in the juryroom there can be no triumph excepting the ascertainment and declaration of the truth.

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none should be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and are to regard each in the light of all the others.

That I may refer to some portion of the evidence and not to another should not be taken by you as any indication as to my opinion of the comparative importance or weight of that particular evidence.

The order in which the instructions are given has no significance as to their relative importance.

A judge of this court, presiding in the trial of an action, is authorized, within proper bounds, [9206] to comment to the jury on the credibility of any witness and on any other phase of evidence.

If it has appeared to you that any remark of mine has expressed an opinion concerning the testimony or credibility of any witness, or the significance or effect of any of the evidence, I caution you that it is your right and duty to exercise the same independence of judgment in weighing my comment on the evidence as you are entitled to exercise in weighing the testimony of the witnesses and the arguments of counsel. Such authority as I, as trial judge, have to express my personal thought on any of these matters is con-

fined to the sole purpose of aiding you in arriving at a verdict, and may not be used, and is not used in this case, to impose my will upon you or to compel a verdict. You will keep in mind that you are the exclusive judges of the credibility of the witnesses and of all questions of fact submitted to you.

On the other hand, your own authority to judge the evidence and to determine the facts in the case has this limitation: it is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules [9207] of law stated to you.

You must also bear in mind certain other rules in weighing the testimony. Certain defendants have introduced evidence of their good character. You should consider the testimony which was offered as to the reputation of the defendants for honesty and integrity. This testimony of the good character of a defendant, together with all the other facts in the record, should be considered in determining the guilt or the innocence of each defendant. Evidence pertaining to the character of a defendant in respect of those traits of character which ordinarily would be involved in the commission of a crime like that charged in this case is regarded by the law as relevant to the question whether a defendant is innocent or guilty of the crime charged. You may, if your judgment so directs, reason that it is improbable that a person of such good character in such respects as was shown by the defendants' witnesses would have committed the crime charged in this indictment. Character evidence, in and of itself alone, may be sufficient to raise a reasonable doubt whether or not a defendant is [9208] guilty, and if a defendant's evidence of such good character

does raise such a reasonable doubt in your mind, then you must find that defendant not guilty.

Neither the prosecution nor the defense is required to call as witnesses all persons who are shown to have been present at any of the events involved in the evidence, or who may appear to have some knowledge of the matters in question in this trial; nor is the prosecution or defense required to produce as exhibits all objects or documents that have been referred to in the testimony, or the existence of which may have been suggested by the evidence.

In determining the credibility and the weight to be given to the testimony of witnesses, the Government is to be considered as any other party and its witnesses like any other witnesses. Neither more nor less weight or credence is to be given the testimony of any witness because he or she was called by the Government than if he or she had been called by a defendant. The Government and the defendants are equal before the law.

[9209] You are the exclusive judges of the credibility of the witnesses. A witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence; by the manner of the witness on the stand, the degree of intelligence exhibited by him, and the manner in which he testifies; by the character of his testimony; by evidence showing his motives, an interest in the outcome of the case, or bias or prejudice against one of the parties; or by evidence that on some former occasion he made a statement or statements inconsistent with his present testimony. You have no right to discredit the testimony of any defendant merely because he is a defendant. You are to treat a defendant the same as any other witness subject to the same tests as are legally applied to other witnesses.

You are bound to consider whether a witness has any motive in testifying falsely against any defendant and if you find such motive for him to testify falsely then you may disbelieve any or all his testimony against any defendant against whom he has testified.

[9210] The greater a person's interest is in the case, the stronger is the temptation to false testimony, and the interest of the defendants who took the stand is of a character possessed by no other witness. Manifestly they have a vital interest in the outcome of this case. This interest is one of the matters which you may consider along with all the other attendant circumstances in determining the credence you will give to their testimony. But, you may find that a defendant is telling the exact truth despite his obvious interest in the outcome.

A witness wilfully false in one material part of his testimony is to be distrusted in others. You may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point. If you are convinced that a witness has stated what was untrue as to a material point, not as a result of mistake or inadvertence, but wilfully and with the design to deceive, then you may treat all of his testimony with distrust and suspicion, and reject all unless you shall be convinced that he has in other particulars sworn to the truth. [9211] In other words, if you find that a witness in the case has lied as to any material fact, you may disregard his or her entire testimony, or any part thereof.

You are not bound to decide in conformity with the testimony of a number of witnesses which does not produce conviction in your mind, as against the declarations of a lesser number or a presumption or other evidence which appeals to your mind with more convincing force.

This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

The impeachment of a witness in any of the ways I have mentioned does not necessarily mean that his or her testimony is completely deprived [9212] of value, or that its value is impaired in any degree. The effect, if any, of the impeachment upon the credibility of the witness is for you to determine.

Where an attempt has been made to impeach a witness by showing that on some former occasion he made a statement or statements that are contradictory to his testimony here, you are instructed that the evidence of any such contradictory statement is not received for the purpose of proving the truth of what he previously said, but only for the purpose of testing the present credibility of the witness. You are permitted to consider such evidence only for that purpose, and you are the exclusive judges of the effect of such evidence on the witness's credibility.

If the complicity of a defendant is predicated solely on the testimony of a single witness and that witness has been so discredited in your minds as to create a reasonable doubt of the guilt of that defendant, you must acquit that defendant. However, if the testimony of the witness thus discredited is corroborated by the testimony of another

witness or other evidence which you believe and which, beyond a reasonable doubt, satisfies you of the [9213] defendant's guilt, you may then convict that defendant.

A witness is said to be corroborated when his testimony, either in whole or in part, is supported either by the testimony of another witness in substantial agreement with him or by other circumstances pointing to the truth of his testimony.

Many of the witnesses in this case have testified that they did not recall certain facts by reason of the lapse of many years. Some of the witnesses stated that records were destroyed because of the lapse of many years. Some persons who might have been witnesses have died. You are not entitled to guess or surmise what such testimony or documentary proof would have shown if it were available at this time.

You have paid strict attention to this trial and I am content that your collective recollection of what transpired in this courtroom is equal or superior to any recital that I might make thereof. This is particularly so because of the summaries of documentary evidence and testimony given you by counsel and the Court at the end of the Government's case and the fairly recent testimony of the defendants [9214] and their witnesses during the defendants' case and the later testimony of the Government's witnesses during its rebuttal. Because of these, I shall not now burden you again with a recital of the evidence as I believe it to have been adduced. However, if in your discussion it appears that there is a dispute as to what was actually testified to, you are, of course, merely upon demand, entitled to have the record read to you. Similarly you may have any exhibit in evidence by merely asking for it.

Many times throughout this trial the Court has been called upon to determine whether or not certain offered evidence should be admitted as to one, any or all defendants. From time to time counsel for each party has interposed objections to evidence. Counsel not only has the right, but he has the duty to his client to make any and all objections which he deems advisable or appropriate, and no inference or presumption can or should be indulged in, one way or the other, by reason of the interposition of such objection. You are not to concern yourselves with, or speculate with regard to, the reasons for such rulings; and you are not to draw any inferences [9215] whatever from them. Whether or not offered evidence is admissible is purely a question of law for the Court to determine. In admitting evidence to which an objection has been made, the Court does not determine what, if any, weight should be given such evidence, nor does the Court pass upon the credibility of any witness. You are the sole judges as to what weight shall be given the evidence, and as to the credibility of the witnesses.

Since defendant Koerner was not made a defendant under the fifth count of the indictment, his income tax return for the year 1952 was not and could not be admitted as to him. This income tax return, which is Government's Exhibit 253, was admitted as to all defendants. Such admission was required under the circumstance caused by the fact that Koerner is not a defendant under this count. Merely because it was so admitted as to all defendants does not mean that you can find from that document alone that any one of the defendants had anything to do with its preparation or filing, nor can you find from that document alone that he had any knowledge of its contents or any part thereof, nor can you find from that document alone that that

defendant has any responsibility for its [9216] falsity, even if you find it was a false return in any respect.

You may not consider any offer of evidence that was rejected by the Court. As to any question to which an objection was sustained, you may not conjecture as to what the answer would have been had an answer been given, nor are you to draw any adverse inference from the fact that an objection was made.

In this connection, you may not consider any evidence which the Court has stricken from the record, despite the fact that you may have actually heard the evidence in the courtroom.

At times throughout the trial, testimony, oral and documentary, was admitted as to a particular defendant or defendants and excluded as to a certain defendant or defendants. You must not consider such excluded evidence as against the defendant or defendants as to which the evidence was so excluded in determining whether a conspiracy did or did not exist. You must consider as against each defendant only such testimony as was admitted as to him and him alone. For example, on November 20, 1952 [9217] defendant Haas answered a series of questions put to him by a number of agents of the Bureau of Internal Revenue. Neither defendant Klein nor any attorney representing him was present on that occasion. The questions and answers which were read into evidence were admitted only as to defendants Haas and Alprin. They must not at any stage of your deliberations on whether a conspiracy existed and whether Klein was a party to such conspiracy be considered as against defendant Klein. To illustrate: Where defendant Haas in such statement testified that defendant Klein

said or did something or where defendant Haas stated that Alprin told Haas that Klein had said or done something, this is not to be taken as any proof that Klein said or did what Haas claimed he said or did, and is not any proof that Klein sa' or did what Alprin purportedly told Haas Klein said or did.

The instruction I have just given you with reference to the Haas statement is equally applicable to the Alprin and Klein statements. Neither of said statements is to be considered by you in determining whether a conspiracy existed or whether he was a party to it as to any defendant other than the one [9218] who made the statement. Any mention therein of any purported statement or act of a defendant other than the one who made the statement to the agents is not to be taken as any proof whatever that such other defendant made the statement or did the act described, in your deliberations to determine whether there was a conspiracy.

Further; any of the statements made by any of the defendants after the conspiracy ended, if you find that there was a conspiracy, are not binding upon any of the other defendants and may not be used to connect them with the conspiracy.

Admissions such as are found in the statements of H. H. Klein, Alprin and Haas to the Bureau of Internal Revenue are not sufficient in themselves to authorize a conviction of the defendant making the admissions unless his admissions are corroborated by independent evidence of the commission by that defendant of the crime charged.

The denial by the Court, from time to time, of motions either by counsel for the Government or for any defendant,

concern questions of law and are not to be considered for any purpose by you. Don't think because I rule against a lawyer that I think his [9219] cause is unjust or weak, or because I rule in favor of a lawyer that I think his cause is right. Those are matters of law. My attitude toward the lawyers, or anything that I have done in the course of the trial is not to influence you in the slightest degree.

The indictment on which the defendants came to trial contained five counts. At the conclusion of the Government's case, after three months of taking of testimony and introduction of exhibits, all defendants moved for directed judgments of acquittal on all five counts. After deliberation, the Court granted the motions as to the first four counts. I charge you that by the judgment of acquittal it has been conclusively determined that the defendants Hyman Harvey Klein, Isidor J. Klein, Albert McLennan, George Norgan, Ellis Rosenberg, Maurice Haas, Irving A. Koerner, Morris O. Alprin and Albert Roer did not conspire to nor did they unlawfully attempt to evade and defeat any part of the income taxes due and owing by defendant Hyman Harvey Klein to the United States for the calendar years 1944, 1945 and 1946 by filing and causing to be filed on May 17, 1948 the income tax return of defendant Hyman Harvey Klein for the calendar [9220] year 1947. The effect of this ruling was also to free from further participation in the case two defendants named in the first four counts but not in the fifth count, namely, Koerner and Roer. As I advised you when we reconvened after the granting of the motions for directed judgments of acquittal on the first four counts, the fact that judgments of acquittal were not directed on the fifth count is to have absolutely no effect on your thinking as to the possible guilt of the defendants still

on trial on the fifth count. The continuation of the case against these defendants was the result of the decision of a question of law and as such is to be given no weight by you in your deliberations on the facts.

As a result of the granting of directed judgments of acquittal on the first four counts, the defendants moved to strike from the evidence certain testimony and exhibits which were received during the course of the Government's case. The granting of judgment of acquittal on the first four counts of the indictment necessitated my striking from the record a large number of exhibits and a great quantity of testimony. You may not consider any of the exhibits [9221] and testimony which has been stricken, in your deliberations regarding the guilt or innocence of the defendants under the fifth count. Some of the testimony and exhibits were stricken from the case because they were relevant only to the first four counts, some remain in the case for all purposes and some remain for a limited purpose, which I shall now explain to you.

The remaining count of the indictment which I shall soon read to you, charges that from on or about June 1, 1946 up to the date of the indictment, the defendants with others conspired in violation of the laws of the United States. The date of inception of the alleged crime, therefore, is on or about June 1, 1946. Ordinarily what transpired before or after the alleged commission of a crime has no probative value in determining whether the crime was in fact committed. However, in conspiracy prosecutions, considerable leeway is given to the Government in showing as "background material" what took place before the time when it is alleged the criminal acts were committed in order

to demonstrate the relationship of the parties and the circumstances leading up to their activities which constitute the basis for [9222] bringing the prosecution.

You will note that the indictment reads, "On or about June 1, 1946." You are not bound or limited by this date, and you may find that a conspiracy began earlier or later than that date. If you find that the conspiracy charged in the indictment began prior to June 1, 1946, then you may consider evidence of occurrences prior to that date and during the term that you find a conspiracy to have existed not merely as background evidence, but as evidence of the scope and nature of the conspiracy and its participants.

Accordingly, when I hereafter refer to the date "on or about June 1, 1946," you shall take it to mean whatever date you, as triers of the facts, find was the date of commencement of the conspiracy, if any.

The testimony and exhibits received in evidence on the Government's case should be segregated mentally by you into two categories, one pertaining to the period "Prior to June 1, 1946" and one "Subsequent to June 1, 1946" keeping in mind that "June 1, 1946" is intended to mean the beginning date of the conspiracy, if there was one.

[9223] The testimony and exhibits referred to in the first category are received in evidence against all defendants for one purpose and that is to show you the events leading up to the defendants' activities on or about June 1, 1946 and thereafter, and the relationship of the defendants and the alleged co-conspirators to each other and to the witnesses and other persons named in the case.

Such evidence as has not been stricken from the record and which relates to the period prior to June 1, 1946 may

only be considered by you as "background material" as I have defined that term. Under no circumstances may that evidence alone be considered by you as establishing the existence or formulation of the conspiracy alleged in the fifth count.

The evidence as to events that occurred prior to June 1, 1946 is to be received and considered by you only as historical background to establish the relationship of the parties prior to the commencement of the alleged conspiracy on June 1, 1946, and for no other purpose.

The testimony and exhibits in the second category, namely, "Subsequent to June 1, 1946," have [9224] been received against all or some or only one defendant. Appropriate instructions to this effect were given to you before the defendants put in their evidence so that you might be advised against whom any particular item of evidence was admitted and again earlier in this charge when I instructed you as to the limitations on the receipt of the Klein, Alprin and Haas statements, all of which fall into this category.

I again remind you that evidence of events subsequent to June 1, 1946 as defined, is received only as to the defendant directly participating therein and may not be otherwise considered in determining whether there was a conspiratorial agreement and if so, who participated therein.

However, if the sum total of that proof, confined to each defendant as to whom it was received, persuades you beyond a reasonable doubt that there was such an agreement and its participants, you may then apply that evidence of events occurring after June 1, 1946, in furtherance of the conspiracy and within the period of the conspiracy as found by you, regardless of the prior restrictions, to all [9225]

defendants whom you have found to be participants, in determining the nature, scope and purpose of the conspiracy and the intent with which it was conceived and furthered.

This charge is an endeavor to give you instructions embodying all rules of law that may become necessary in guiding you to a just and lawful verdict. The applicability of some of these instructions will depend upon the conclusions you reach as to what the facts are. As to any such instruction, the fact that it has been given must not be taken as indicating an opinion of the Court that the instruction will be necessary or as to what the facts are. If an instruction applies only to a state of facts which you find does not exist, you will disregard the instruction.

A preliminary word as to what this case is not about:

It is the right as well as the interest of the taxpayer to limit his admission of liability for tax to the amount he actually owes. But the law is complicated, accounting treatment of various items raises problems of great complexity, and innocent errors [9226] are numerous, as appears from the number who make overpayments. It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care. Such errors are corrected by the assessment of the deficiency of tax and its collection, with interest for the delay.

It is entirely proper for the Bureau of Internal Revenue to assert, and in good faith to seek to collect, by all proper means, income taxes which it believes are due and owing from a taxpayer.

It is the policy of the law to encourage individuals and corporations to settle and compromise disputes, including disputes concerning asserted income tax liability.

There has been some testimony in this case to the effect that the defendant Klein had made some offer to settle the claims of the Bureau of Internal Revenue asserted against him, his wife and the H. Harvey Company. This he had the absolute right to do—and it must not be considered by you as an admission that either he, his wife or the H. Harvey Company owed one penny in income taxes.

We are not concerned with the question as to whether or not the Government will collect any income taxes from the defendants, or whether liens have been filed, or whether in any civil proceeding the defendants will be required to pay any additional taxes on income. The prosecution has for its object the enforcement of those criminal sanctions set up by the Congress against those who wilfully conspire to obstruct the governmental function of collection of taxes rightfully due. The outcome of this case will not determine the amount of taxes and civil penalties, if any, which the defendants, or any of them, may ultimately be required to pay. That is not before you.

Further you are instructed that there is no charge in the indictment and no claim is made by the Government in this case that there was any violation, in any respect whatsoever, of either OPA or any of its regulations. Hence you must not consider or discuss the same.

My instructions for the most part thus far have been designed to delineate for you generally the scope of your duty as jurors and mine as judge. [9228] With that general background, I will now undertake to explore for you some specific subjects that come into sharper focus as a result of what transpired as the trial of these defendants unfolded.

The defendants have been charged by the Grand Jury as follows (and I now quote from the indictment):

"FIFTH COUNT

The Grand Jury charges:

1. From on or about June 1, 1946, the exact date being to the grand jurors unknown, and continuously thereafter, up to and including the date of this indictment, in the Southern District of New York, Hyman Harvey Klein, Isidor J. Klein, Albert McLennan, George Norgan, Ellis Rosenberg, Maurice Haas and Morris O. Alprin, the defendants, and Irving A. Koerner, William Rokoff and Harry Silver, co-conspirators but not defendants herein, and diverse other persons whose names are to the Grand Jury unknown, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with diverse other persons to the Grand Jury unknown, to defraud the United States by impeding, [9229] impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue; to wit, income taxes.

2. It was a part of said conspiracy that the defendants would conceal and continue to conceal the nature of their business activities and the source and nature of their income.

3. It was further a part of said conspiracy that the defendants would file and cause to be filed with the District Director of Internal Revenue, Brooklyn, N. Y., an individual Federal income tax return, Form 1040, for the defendant Morris O. Alprin, and his wife, Sadie F. Alprin, for the calendar year 1952, wherein certain net income was stated to constitute capital gain for the purpose of con-

cealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

4. It was a further part of said conspiracy that the defendants would file and cause to be filed with the District Director of Internal Revenue, Brooklyn, N. Y., an individual Federal income tax return, Form 1040, for Irving A. Koerner, [9230] a co-conspirator, and his wife, Marie A. Koerner, for the calendar year 1952, wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

5. It was further a part of said conspiracy that the defendants would file and cause to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of New York, now known as the District Director, Brooklyn, New York, an individual Federal income tax return, Form 1040, for Albert Roer and his wife, Kate Roer, for the calendar year 1950, wherein certain net income was stated to constitute capital gain for the purpose of concealing the nature and source of the net income received by the defendants during the years 1944, 1945, 1946 and 1947.

6. It was further a part of said conspiracy that the defendants would make and cause to be made entries of certain books and records of Tivoli Trading Co., a Panamanian corporation, for the purpose of concealing the nature and source of the income received [9231] by the defendants herein.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about February 29, 1952, the defendant, Morris O. Alprin, had a conversation with Hyman Harvey Klein, the defendant; . . .

(Title 18, Section 371 (1946 Ed. Supp. V), United States Code.)

Other overt acts are set forth in the indictment but because no testimony thereon was admitted during the trial I am deleting them from this quotation because they are not before you.

These defendants have pleaded not guilty. Having made the charges, the burden of proof is upon the Government to prove them beyond a reasonable doubt—and it is a burden that never shifts and remains upon the Government throughout the entire trial. In other words, a defendant in a criminal case is presumed to be innocent until his guilt has been established by competent evidence beyond a reasonable doubt. When a person is charged with the commission of a crime, he is not required to prove that he did not [9232] commit the crime. It is the Government which is, by law, burdened with the obligation of proving the case set out in the indictment, beyond a reasonable doubt. And before you can lawfully return a verdict of guilty you must find that every element essential to establishing guilt has been so proven. The law demands acquittal, unless every material and necessary fact upon which a conviction depends is proved, to the satisfaction of each individual juryman, beyond a reasonable doubt.

Mere probabilities or suspicions are not sufficient to warrant a conviction. It is not sufficient even that the greater weight or preponderance of the evidence supports the allegations of an indictment unless you are convinced therefrom of guilt beyond a reasonable doubt. It is not sufficient that upon the doctrine of chances, it is more probable that the defendants are guilty than innocent.

At this point, however, I wish to emphasize to you that as to the charges contained in this indictment, the charges of the Grand Jury are only charges or accusations and nothing more. The indictment is a mere paperwriting which serves to apprise the defendants of the nature of the charges [9233] against them. It is only a step in our procedure to bring the defendants to trial.

The indictment by the Grand Jury is no evidence whatsoever of the defendants' guilt. An indictment is nothing more or less than an accusation in writing without probative or evidentiary force or effect. Innocent as well as guilty men have been indicted. You will not give any weight whatsoever to the fact that an indictment has been returned against these defendants. Nor will you give any weight whatsoever to the allegations of the indictment. They do not create, and you should not permit them to create, even a suspicion of guilt.

Similarly, the fact that there were originally five counts in this indictment is not to be taken by you as evidence of anything and, as I have heretofore emphasized, certainly not as evidence of guilt on the single remaining count of the indictment.

Neither the indictment nor the bill of particulars constitutes evidence whatsoever in this trial. The indictment is merely an accusation which the Government must prove to

is true beyond a reasonable doubt by competent evidence [9234] before you. The bill of particulars is merely particularizations of the charge in the indictment. It is not to be considered by you as any proof of guilt whatsoever for any purpose. You are not to conclude merely from the indictment standing alone, nor from the fact that the defendants are on trial, that they or any of them are guilty. By the finding of an indictment, no presumption whatsoever arises that a defendant is guilty, or that he has had any connection with, or responsibility for, any act charged against him. A defendant is presumed to be innocent at all stages of the proceeding, and unless the evidence introduced on behalf of the Government shows him to be guilty of each and every element of the offense charged beyond a reasonable doubt, you must find the defendant not guilty. As I advised you earlier in this charge, you are to be governed solely by the evidence introduced in this trial and the law as stated to you my me.

We will now interrupt for a 15-minute recess.

(Short recess.)

The Court: Another important principle must be kept in your mind throughout your deliberations [9235] in this case. The guilt or innocence of each defendant must be determined by you separately. Each defendant has the same right to that kind of consideration on your part as if he were being tried alone. You may not assume that all are either "guilty" or "not guilty" simply because they are tried together.

Just because seven defendants and three co-conspirators are charged in this indictment does not mean that you must find all the defendants on trial guilty or all not guilty.

In your deliberations you must consider the charge against each defendant and the evidence against him as though that defendant stood trial alone.

The indictment accuses these defendants of conspiring to defraud the United States. Conspiracy has been made a crime because it is believed that when two or more persons combine in conspiracy against the United States, the danger to the Government from such concerted action is greater than if one person alone is involved. For two or more persons to conspire, confederate or combine together to defraud the United States is an offense of grave character. [9236] It is almost always characterized by secrecy, rendering detection difficult and requiring much time for its discovery. Therefore, the making of an agreement to do that which is unlawful and the commission of an overt act, which I shall later explain, done in pursuance of such an agreement, is in and of itself made a crime.

The question of whether or not the defendants accomplished what they conspired to do is immaterial to the question of their guilt or innocence. The offense of a conspiracy is completed if you find the defendants were parties to an illegal agreement, as set forth in the indictment, and the commission of one or more of the overt acts in furtherance thereof. Even if you find that the defendants were unsuccessful in the alleged attempt to throw sand in the Government's eyes, and even if you find that the Government knew from other sources the nature of this income in 1950 to 1952, you may nonetheless find the defendants guilty of the crime of conspiracy as charged in the indictment.

The crime of conspiracy is defined in Section 371 of Title 18 of the United States Code as follows:

[9237] "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States or any agency thereof in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each . . ."; there then follows the penalty provision which does not concern you in your deliberations.

Since the alleged crime for which these defendants are being tried is the charge that they conspired to defraud the United States, your first concern is "What are the elements essential to the crime of conspiracy?" A conspiracy, in criminal law, as applied to the charge in this case, is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose. To constitute a conspiracy, it is not necessary that two or more persons should meet together, and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly in words or in writing, state what the unlawful scheme is to be and the details of the plan or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, passively or tacitly, come to a mutual understanding to accomplish the combination and unlawful design.

[9238] In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by a common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, such persons become conspirators. "Conspiracy" as charged in this indictment, is a combination or joining together of two or more persons to defraud the United States. The basis of a

conspiracy is the unity of design and purpose. It is what has been agreed to and not what has been done; and so it has been held that several persons may, simultaneously, actually do things, without incurring criminal liability, which, if they were the object of a preconcerted design, would make them guilty of conspiracy. But the plan alone does not constitute a crime. Something must be done to carry out the purpose of the plan. Before any of these defendants can be found guilty, you must be satisfied that there was an agreement, understanding or plan to accomplish an unlawful end and also that some act was done to further the objects of the alleged conspiracy. This act in furtherance of a conspiracy is called an "overt act". The gist of the offense of conspiracy is agreement among two or more persons to commit an [9239] offense, followed by an act of one or more of them to accomplish the object of the conspiracy. Even if a conspiracy were entered into, it does not constitute a crime, unless an overt act has been performed to carry out its object.

An overt act is simply evidence that the conspiracy has passed beyond the planning stage. It is an act done in furtherance of the conspiracy; a step taken by the conspirators or any of them to accomplish their unlawful purpose.

The overt act need not be, of itself, a criminal act. It may be in essence a perfectly harmless act that is alleged and proved as an overt act in furtherance of the plan. If it is an act done for the purpose of carrying out the unlawful agreement, then the crime of conspiracy has been committed. It is only necessary to show that some overt act, either as charged in the indictment or otherwise was done

for the purpose of carrying out the object of the unlawful agreement.

It is not incumbent upon the prosecution to prove that all of the means set out in the indictment were, in fact, agreed upon to carry out the conspiracy, or that all of them were actually used or put into [9240] operation. It is sufficient if it be established to your satisfaction, and beyond a reasonable doubt, that one or more of the means described in the indictment was agreed upon to be used to effect the conspiracy.

If an offense was committed by one of the defendants or co-conspirators, but it was not in fact done in furtherance of the conspiracy, did not fall within the scope of the unlawful project, or could not have been reasonably foreseen as a necessary or natural consequence of the unlawful agreement, then you may not hold the others responsible for it.

Before you can find any defendant guilty of the crime charged in this indictment, you must first determine from all the evidence in the case, properly segregated as I have heretofore instructed you, whether a conspiracy existed as charged; that that defendant was a member thereof, and, finally, that at least one overt act was committed in furtherance of the objects of the conspiracy.

A conspiracy is constituted by an agreement. While it is not essential that the agreement should be formal, it is necessary that the minds of the parties meet, so as to bring about an intelligent [9241] and deliberate agreement to do the acts.

When the Government relies upon circumstantial evidence to establish the conspiracy, as here, the circumstances

must be such as to warrant your finding that the alleged conspirators had some unity of purpose, some common design and undertaking, some meeting of minds in an unlawful arrangement and the doing of some overt act to accomplish its object.

In order to find any defendant guilty of the conspiracy charged, you must find more than that he knew of the existence of the alleged conspiracy and you must find that he affirmatively agreed at least tacitly to take some part in the conspiracy.

The Government must have proved beyond a reasonable doubt that a defendant was knowingly associated in the unlawful common enterprise; that he participated in it wilfully with intent to further the common purpose or design.

Persons having no knowledge of the conspiracy are not conspirators, even though their actions may further the object of a conspiracy. Thus, even if a defendant committed overt acts in furtherance of the conspiracy, you must find him not guilty if he did not [9242] join in the criminal agreement.

If you conclude that such conspiracy did exist, you should next determine, as to each defendant, whether or not he was knowingly and wilfully a party to the conspiracy. In considering whether or not a particular defendant was a member of the conspiracy, you must do so without regard to and independently of the acts, statements or declarations of others. That is to say, you must determine the issue as to membership of a particular defendant in a conspiracy from the evidence concerning his own actions, his own conduct, his own declarations, or his own statements, and his own connection with the actions and conduct of others.

A particular defendant's connection with a conspiracy cannot be established by the acts or declarations of other defendants in his absence. And a defendant cannot be bound by the acts or declarations of other defendants until (a) the conspiracy has been established, and (b) the defendant's participation in the conspiracy has been established.

The guilt of a conspirator is not governed by the extent of his participation. Even if one [9243] engaged in the conspiracy to a degree more limited than that of his co-conspirator he is equally culpable as long as he was, in fact, a conspirator.

One may be a conspirator, and guilty as such, even though he does not know all the details of the conspiracy, or the identity of all the participants.

But even if you find that a defendant entered into a conspiracy, it does not follow that he is liable for everything any one of the original participants does, and even for what those do who join later. Nothing could be more untrue. Nobody is liable in conspiracy, except for the fair import of the concerted purpose or agreement as he understands it; if later comers change that, he is not liable for the change.

You may not find a defendant to have been a conspirator, unless the unlawful acts charged were embraced within the common purposes of which he was aware. It is never permissible to enlarge the scope of the conspiracy itself by proving that some of the conspirators, unknown to the rest, have done what was beyond the reasonable intendment of the common understanding.

The fact that A makes a criminal agreement [9244] with B does not cause A to become a party to very conspiracy into which B may subsequently enter or may have

entered with third persons. The scope of the agreement actually made between A and B limits the conspiracy between them.

In deliberating on the guilt or innocence of each defendant, you are to consider all the evidence in the case admitted against that defendant. In determining whether or not a conspiracy existed, in a case like this one, you are not to judge the character and effect of the alleged conspiracy by dismembering it and viewing it in separate parts, but only by looking at it as a whole. In other words, you are to consider all the facts, all the circumstances, all the testimony, and all the exhibits in the case, except of course, where evidence has been excluded as to a defendant, you must not consider that evidence against him in deliberating on his guilt or innocence and you are not to consider for any purpose any of the testimony or any of the exhibits that have been stricken; you are to consider only that testimony and those exhibits which remain in the case after the granting of the motions to strike.

[9245] However, if and when the existence of the conspiracy charged in the indictment and the membership of all or any of the defendants in such conspiracy has been found, then the acts thereafter done and the statements or declarations thereafter made by any person found by you to be a member of the conspiracy may be considered in connection with the case as to any defendant whom you find to have been a member of the conspiracy, even though such acts and declarations may have been made in the absence and without the knowledge of such defendant, provided such acts were done and such statements or declarations were made during the continuance of such conspiracy and in furtherance of an object or purpose of the conspiracy.

But, if upon a fair and impartial consideration of all the evidence in this case, you should find that there are two reasonable inferences which may be drawn from the evidence, one of which is consistent with the guilt of a defendant, and the other of which is consistent with his innocence, then you must find that defendant not guilty.

The fifth count of the indictment charges that the defendants therein named did violate 18 U. S. C. [9246] Section 371 by conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue, to wit, income taxes.

In other words, the fifth count charges a conspiracy to conceal from the Government, by various means and machinations, information relating to the nature of the defendants' business activities and the nature and source of their income to which it was entitled and to prevent the Government from determining by the ordinary processes of investigation and audit how much, if any, tax was owed by the defendants Klein, Alprin, Haas and the three Canadian defendants who are not before the court.

The theory of the Government is that the defendants and the co-conspirators were engaged in a concerted effort to conceal from the United States Treasury Department, the agency charged with the duty of collecting income taxes, the nature of their business activities and the source and nature of their income. The defendants are not charged with the commission of specific crimes as such, except in so far as you may find that in furtherance of [9247] this alleged criminal agreement, criminal acts might have been committed. You will keep in mind, however, that whatever

unlawful acts, if any, might have been committed by these defendants, they are not on trial for those crimes, but they are on trial under an accusation that from on or about June 1, 1946 to the date of the indictment, the defendants and alleged co-conspirators sought to defraud the United States by impeding, impairing, obstructing and defeating the Treasury Department in its work of collecting income taxes.

I charge you that nowhere in the fifth count, which is the only count with which we are concerned, is any defendant charged with the substantive crime of having failed to report or to pay all the income tax properly due from him.

I charge you that it is not claimed by the prosecution that the filing of the defendant Klein's income tax return for the years 1944, 1945, 1946, 1947 or for any other year was any part of the conspiracy charged in the fifth count.

The Government need not prove that the conspiracy existed over the whole course of time which is alleged in the indictment. Here it says [9248] the conspiracy began in 1946, and continued down to the date of the filing of the indictment. But if you find that within that period all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt then that crime becomes complete, and the fact that the Government did not show it as being carried on as long as the indictment says in itself is not of any importance so far as the elements of the crime are concerned.

You will recall the language of the conspiracy statute forbids a conspiracy to defraud the United States in any manner or for any purpose. This phrase, "defraud the

United States in any manner or for any purpose" is not limited merely to conspiracies to deprive the United States of money or property or for things of pecuniary value but also means to interfere with or obstruct any of the lawful governmental functions of the Federal Government by deceit, corruption, or trickery, or by means that are dishonest.

Obviously the Treasury Department cannot enforce the collection of income taxes unless it can first ascertain the true business relationship between and among persons and corporations engaged [9249] in income producing activity so that any tax liability can be determined and verified. If the facts which determine their legal relationship and the source and nature of their income are concealed or kept under cover by deceit, trickery or dishonest means, then it follows that the Treasury Department's lawful functions in the collection of income taxes have been subject to efforts designed to impede, impair, obstruct and defeat those functions.

The defrauding of the United States by impeding, impairing, obstructing and defeating the lawful functions of the Treasury Department in the collection of income taxes by deceit, craft, trickery, misrepresentation, or other dishonest means refers to conduct wilfully engaged in in order to cause the deceived person, to wit, the Government in this case, to follow some course of conduct it would not have pursued but for the deceitful conduct or not to follow some course of conduct it would have pursued but for the deceitful conduct.

Now, in this indictment the Government does not charge these defendants with a failure as such to come forward with facts which might be relevant [9250] to tax liability.

It does not charge the defendants with merely failing to call the attention of the tax authorities to their activities and business relationships and the nature and source of their income. The indictment is not couched in negative terms. In this indictment, the defendants are charged with affirmative conduct wilfully and knowingly designed and executed with an evil motive and purpose, namely, to so arrange their affairs and their records and to file income tax returns and to so demean themselves as to deceive and delude the tax authorities when and if the authorities should seek to ascertain and verify the liability for income taxation of the defendants.

There is no obligation on a taxpayer to volunteer information which might invite a searching analysis of his and his associates' transactions for the purpose of ascertaining or verifying tax liability. But there is an obligation imposed by the law on persons whose activities may become subject to scrutiny by the agency of government charged with the duty of collection of the revenue from income taxes to demean themselves honestly and not to conceal from the tax authorities the business relationships [9251] of such persons and the nature and source of their income. By way of illustration, conduct calculated to defraud the United States as charged in the indictment might be spelled out of such conduct as making false entries or alterations in books or records of account, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind and any conduct, the likely effect of which would be to mislead or conceal.

I caution you as I have before and will again that any examples or analogies I may give you in this charge are

not intended to convey to you my opinion of what these defendants and their alleged co-conspirators have done or what their intent was. The decision of those issues of fact is exclusively your province. I cite these matters to you solely as an aid to an intelligent approach to your deliberations.

The indictment charges that it was part of the conspiracy that the defendants would conceal and continue to conceal the nature of their business activities and the source and nature of their income.

[9252] What could you reasonably infer from the evidence was the nature of the defendants' business activities and the nature and source of their income? You could find that Hyman Harvey Klein was the American representative of the group of corporations which so successfully sold whiskey during the years 1944, 1945 and 1946. I will hereafter at times refer to this corporate group as the "syndicate". You could find that the defendant Alprin and the alleged co-conspirator Koerner and Roer, as they claimed, had been promised by Hyman Harvey Klein an interest in the syndicate's profits and that on termination of the syndicate's activity, after he took his share of the syndicate's earnings, they did receive their shares from him in the form of drafts.

So that you may properly understand that sentence, I will re-read the entire paragraph.

What could you reasonably infer from the evidence was the nature of the defendants' business activities and the nature and source of their income? You could find that Hyman Harvey Klein was the American representative of the group of corporations which so successfully sold

whiskey during the years [9253] 1944, 1945 and 1946. I will hereafter at times refer to this corporate group as the "syndicate". You could find that the defendant Alprin and the alleged co-conspirator Koerner and Roer, as they claimed, had been promised by Hyman Harvey Klein an interest in the syndicate's profits and that on termination of the syndicate's activity, after he took his share of the syndicate's earnings, they did receive their shares from him in the form of drafts.

On March 27, 1947 two drafts bearing that date, of Royal Bank of Canada, Montreal Branch, were drawn to the order of La Economica Agencias, S. A., the stock of which was wholly owned by defendant Alprin. Each draft was for $204,162.70 and that amount was debited to the account of Tivoli Trading Co. with the Royal Bank of Canada, Montreal Branch. On the same date a third draft, bearing that date, of the Royal Bank of Canada, Montreal Branch, in the sum of $272,423.62 was drawn in favor of Compania Exportadora Fernandina, S. A., the stock of which was wholly owned by Roer, and debited to the account of Tivoli Trading Co. with the Royal Bank of Canada, Montreal Branch. These three drafts will be here-[9254] after referred to for convenience as the Alprin, Koerner and Roer drafts.

You could find that Alprin and Koerner and Roer were entitled to their respective shares of the syndicate's earnings by reason of their activities during the years when the whiskey selling venture was in operation. You could find that the sum of more than a quarter of a million dollars received by each of Alprin, Koerner and Roer was, as claimed by Klein, a bonus and hence ordinary income to the recipients

of the proceeds of those drafts or, possibly, a gift. The right of Tivoli Trading Co., S. A., to pay Alprin, Koerner and Roer a bonus is not involved in this case. You must assume that Tivoli Trading Co., S. A., had that right.

On the other hand, you might find that it was, as claimed by Alprin, Koerner and Roer, a liquidating dividend on the dissolution of Tivoli Trading Co., despite the fact that Alprin, Koerner and Roer might have prior thereto surrendered their subscriptions to shares of stock in that corporation.

Stock certificates are merely evidence of ownership of a corporation. Failure to receive such [9255] stock certificates does not mean that the ownership which the certificates represent did not exist.

When a corporation goes out of business and gives up its legal existence, its remaining funds are divided among its stockholders in what is referred to as a "liquidating dividend". A liquidating dividend is a payment to the stockholder in exchange for the stock he holds in the corporation. The gain or loss to the stockholder, that is, the difference between what the stock cost him and what he was paid in exchange for it, is treated for tax purposes as a capital gain or loss rather than as an ordinary income item.

In determining which of the two alternative types of payments the drafts represented, you may consider the fact that there are in evidence documents purporting to be receipts by Alprin, Koerner, and Roer of refunds to them of the moneys they originally invested in Tivoli, which documents admittedly bear their signatures. However, it is possible that Hyman Harvey Klein had recognized their right to an equity in the "profit holding" corporation as if

they were stockholders, although no stock was issued or, if issued, the certificates had later [9256] been canceled.

But in spite of which of those inconsistent claims you might find to be true, you could find that the manner of handling the payment of those sums was part of an overall plan by the defendants and co-conspirators to conceal from the United States Treasury Department the facts, whatever they were, so that the true income tax liability, if any, of the defendants might not be ascertained.

You could also find that at the time when the drafts were delivered to Alprin and Roer they were either a liquidating dividend or compensation or a gift, but with a condition attached. You could find that there was an understanding that they were to be held pending the determination of the tax consequences of the syndicate's operations. It might be found that it was agreed that Alprin, Koerner and Roer were not to receive their liquidating dividend or compensation for services or gift until the tax, if any, to be assessed against Hyman Harvey Klein or his corporations or his three Canadian co-venturers and him, on the income resulting from the whiskey selling venture, was determined. You might find that it was agreed [9257] that the tax on these one quarter million dollar payments, if paid by Klein and his associates was to be apportioned against these payments and Klein was to be reimbursed therefor.

The United States in performing its governmental function of assessing and collecting income taxes, is under our law entitled to the economic facts upon which the proper tax is to be computed. It is the duty of everyone in our country to supply those facts as required by law.

Now, if you find that there was such a deliberate and evil agreement or concert of intention on the part of the alleged co-conspirators as is charged in the indictment and that the handling of these quarter million dollar payments was an intentional act done in furtherance thereof, you may find such, if any, of the defendants as were co-conspirators, guilty as charged in the indictment.

On the other hand, you could find that the arrangements between and among the alleged co-conspirators were completely innocent of any design to accomplish the fraud charged in the indictment. Keep in mind that unless a person and the "evil purpose" or "unlawful intent" which I will explain [9258] at length later in this charge, he was not a conspirator as claimed by the prosecution.

In determining whether the Government has proven the charge here beyond a reasonable doubt, you may consider whether it is likely that one contemplating a fraud on the United States to be made effective by concealment, would set forth the transactions in the Tivoli Trading Co., S.A., ledger, which he knew or had reason to know would be open to examination.

If you find that the Alprin, Koerner and Roer drafts did in fact represent the unconditional payment to them of a bonus, commissions, or compensation, then you may not find that Klein's testimony to that effect before Special Agents Victory and McCarthy was an act in furtherance of the alleged conspiracy.

[9259] If you find that the Alprin, Koerner and Roer drafts represented the conditional payment to them of their share in the liquidation of Tivoli Trading Co., S.A., then you may not find that Alprin's testimony to that effect

before Special Agents Victory and McCarthy was an act in furtherance of the alleged conspiracy.

The Government has conceded that the proceeds of each of the three drafts to La Economica Agencias, S.A. and Compania Exportadora Fernandina, S.A. became the property of Alprin, Koerner and Roer, and that defendant Klein did not thereafter have or retain any interest therein. You must not and indeed you cannot assume, surmise, speculate, guess or imagine anything to the contrary.

The prosecution has conceded, and you therefore must accept it as the fact, that no part of the proceeds of the Alprin, Koerner and Roer drafts were received by defendant Klein or inured in any way to his benefit; and you may take that conceded fact into consideration in determining whether or not the defendant Klein had any motive inducing him to formulate or to join the alleged conspiracy. Of course, as I have already stated, you might be [9260] satisfied from the other evidence in the case, that he did have such a motive.

How does the Government claim the activities of the defendants and co-conspirators, in regard to the payment of these large sums of money and in regard to their other activities, were calculated to defraud the United States as charged? It is the prosecution's theory that from the inception of the claimed conspiracy, the actions of the participants were directed toward masking their business activities and the source and nature of their income so that the Treasury Department would not be advised of facts on which tax liability, if any, of the defendants could be ascertained or investigated. There is testimony that Alprin, Koerner and Roer in June, 1946 went to Havana,

Cuba, where twelve corporations were formed for them, by Dr. Alberto Valverde, but the Government urges actually under the guidance of Hyman Harvey Klein's lawyers, Dr. Moran and Dr. de Cubas, who had formed many of the corporations used by the syndicate. Two of these corporations were the payees of the checks used by Hyman Harvey Klein to distribute to Alprin, Koerner and Roer, through [9261] Tivoli's account, their compensation or share of the syndicate's profits. Another of these corporations, La Ribera, will be discussed later.

If you find that the Alprin, Koerner and Roer drafts were made payable to their corporate nominees, rather than to themselves individually, at their request, the defendant Klein had the right to make the drafts so payable and to assume that the income taxes properly payable upon those drafts would in fact be paid. In other words; the mere fact, standing alone, that Klein paid these sums to corporate nominees of Alprin, Koerner and Roer does not of itself, establish a conspiracy or the connection of any defendant with a conspiracy.

There is evidence from which you could find that when Klein put these checks in Alprin's and Roer's hands, Alprin and Roer were told that they were not to be cashed until he Klein gave permission. If you so find, you may well inquire why payment of these checks was ordered to be held in suspense pending word from Hyman Harvey Klein and why they were made payable to the order of two Cuban corporations instead of to Alprin, Koerner and Roer, especially when it might be found by you that Hyman Harvey Klein expected [9262] to be involved in tax difficulties at the time these checks were issued and Tivoli Trading Com-

pany's books had entries showing that these large sums had been paid out as commissions long before the payee corporations negotiated the checks.

However, if your deliberations should lead you to inquire whether Hyman Harvey Klein anticipated an investigation of his income tax status, I charge you that merely because the OPA was making, or had made, an investigation, it does not follow that defendant Klein should have assumed that the United States Government was investigating his income tax status.

You may consider the "La Ribera transaction". Haas' statement claimed that he was given this corporation by Roer for $800.00 on Klein's orders, after which Tivoli Trading Co. loaned the corporation the sum of $35,000 and Klein refused repayment thereof when tendered to him by Haas. Haas and his partners returned this sum as a "capital gain" on their partnership income tax returns for the year 1949, the year when the indebtedness was claimed to be forgiven. There are several inferences that might reasonably be [9263] drawn as to the nature of this transaction between Klein and Haas, considering the business relations among Klein, Haas and Alprin and the other alleged co-conspirators.

You must determine what was the nature of this transaction claimed by the prosecution to be a phase of the conspiracy and the intent of the parties, in engaging therein, just as you must, considering all the evidence, determine the other issues of fact in this case.

I cite these two transactions, namely the payments to Koerner, Alprin and Roer through their corporations, and the La Ribera transactions and other episodes disclosed

by the testimony merely for your guidance to show you the general course that your deliberations might pursue.

It is not done to indicate to you that I consider these transactions relatively important or unimportant in the case, nor do I mean to express any opinion I might have as to what actually took place between and among the defendants and what was their intent in so doing.

You, as I have said before, must decide all the issues in this case on the evidence presented [9264] and the law as stated to you by me.

There has also been substantial testimony about the transfer of eight million dollars in Canadian bonds owned by Waldorf, Seaboard and Regan Potter to the Montreal Branch of the Royal Bank of Canada. That is the only proof in this case of any such transfer. I charge you that corporations organized under the laws of Cuba and Panama are free to keep their securities in the United States or out of the United States and once the funds are deposited in banks in the United States for safekeeping they have the right to thereafter freely remove them to banks outside the United States. However, here again, the purpose of such removal may be considered by you in connection with other evidence in determining the guilt or innocence of the defendants of the crime charged in the fifth count.

There is no direct evidence before you that the defendant Klein had anything whatever to do with the preparation and filing of the income tax returns filed by Roer and his wife in 1950 or by Alprin and his wife and by Koerner and his wife in 1952; nor is there any direct evidence that [9265] defendant Klein was consulted, or that he advised, suggested or directed in the preparation and filing of any

of those returns. However, as I have stated before, what inferences are to be drawn from the evidence as a whole is a question for you to determine.

Before you can find any defendant guilty of the conspiracy charged in the fifth count, you must find (1) that such a conspiracy did exist in fact; (2) that that defendant knowingly participated in that conspiracy; and (3) that that defendant did not withdraw from the conspiracy on or before September 17, 1951. In order to find any defendant guilty you must be convinced beyond a reasonable doubt that he not only knew of the conspiracy alleged in the indictment, but that he actually participated in it, and that his participation was knowing and wilful; that he knew it was for an illegal purpose and he participated just the same and tried to help in the accomplishment of such an illegal purpose.

I charge you as a matter of law that if you find a conspiracy, and that a given defendant was a party to it at any time, he is at law presumed to remain a party to the conspiracy until such time as he by some [9266] affirmative action withdraws from the conspiracy. Such affirmative act must be shown by affirmative proof, and must indicate his intent to disavow or defeat the purpose of the conspiracy.

As to each defendant, therefore, the ultimate issues on which a finding of "guilty" or "not guilty" will be predicated, are the following:

(1) Did that defendant subsequent to on or about June 1, 1946, in concert with one or more co-conspirators knowingly and wilfully seek to impede, impair, obstruct and defeat the lawful functions of the Department of the Treas-

ury in the collection of the revenue; to wit, income taxes, and if so

(2) was this frustration of the lawful function of an agency of the United States sought to be accomplished by concealing from that governmental agency the facts of the nature of the defendants' business activities and the source and nature of their income so that the agents of the Department of the Treasury could not fully investigate the facts to ascertain the income tax liability, if any, of the defendants and

(3) was an overt act in furtherance of the [9267] conspiracy committed after September 17, 1951?

The cardinal element of the accusation in the indictment is the intent with which the defendants are said to have acted. A person has an absolute right to demean himself and conduct his affairs in any way he chooses, so long as his intent in doing what he does is lawful. Except where disclosure is required by proper legal authority, every person and every corporation is entitled to maintain the privacy of his or its business, books, papers and documents and to prevent others from inspecting them. No inference of wrongdoing may be drawn by you as against any defendant merely for having availed himself of that right. The defendants had the absolute right to use one or more domestic or foreign corporations, incorporated any place in the world, for any legitimate business reason or even merely to satisfy an individual's whim or caprice, or for no reason at all. But, nobody has the right to demean himself or conduct his affairs in such a manner with the intent thereby affirmatively to conceal facts from, mislead or dupe an agency of the United States in the fulfillment of its governmental function.

[9268] In determining the intent of the defendants, you may consider the conflict between the statements of Klein and Rokoff on the one hand, and Alprin, Haas, Koerner and Roer on the other, together with the failure to use these substantial funds aggregating over three quarters of a million dollars, with the attendant loss of interest thereon while they were held undeposited. In this connection, you may also consider that entries in the Tivoli books indicate that these three drafts were business expenditures—i.e. commissions and expenses—for the year 1947.

You are not to conclude from the foregoing that I am expressing any opinion I have on what the intention or purpose of these defendants was. That crucial question, why they acted as they did in conducting their affairs, is the heart of this case and it is a question of fact for you to determine on all the evidence and under the instructions contained in this charge.

You will keep in mind throughout your deliberations that the indictment charges, and the Government must prove, that the alleged co-conspirators acted "wilfully" and "knowingly". These are vital [9269] elements of the charge against the defendants and must be established to your satisfaction beyond a reasonable doubt.

The crime charged cannot be committed innocently or by accident or inadvertence or negligence or ignorance or misunderstanding. That is, the alleged co-conspirators must act "knowingly". For example, a person might make a false statement to a Treasury agent or file a false income tax return with the Treasury which he does not know to be false, but which statement or return in fact is false and did tend to impede, impair, obstruct and defeat the Treasury

Department in its lawful function of collection of the revenue. That person is guilty of no crime, since he had no knowledge of the falseness of the statement or return at the time. But if he acted as he did with knowledge that the statement or return was false, in concert with another or others who had the specific intent by so doing to defraud the United States, that is with a consciousness of their wrongdoing, then, even if he did not accomplish the intended result, that person with the other or others would be equally guilty of the crime of [9270] conspiracy to defraud the United States.

Further, to be guilty the alleged co-conspirators must act "wilfully", that is they must have a specific intent to accomplish the result which the law declares to be criminal, in the instant case the charge being acts done in concert with intent to defraud the United States. Wilful intent is an essential element of the offense charged in this case. Wilful as used in this statute means more than doing something deliberately. It means doing something with a bad purpose. There must be an intention to accomplish the forbidden result. In this connection you are instructed that there is a very real and vital difference between simply doing an act and doing that act "wilfully". In the first case, no bad intent or purpose is involved, while in the second case of "wilfully" doing the act, the elements of guilty knowledge and bad purpose are involved and constitute the gist of the offense. You are also instructed that the use of the word "wilfully" in the indictment implies that an act was not merely "voluntarily" done, but that it was done with an evil intent and bad purpose to do wrong. [9271] Unless you find such evil intent beyond a reasonable doubt you must

find the defendants not guilty. In other words, to establish his guilt as a participant in a criminal conspiracy, the Government must prove that a defendant had a corrupt motive or intent. There must be an evil design. Mere knowledge, acquiescence, or approval of an act, without cooperation or agreement to cooperate does not make one a member of a conspiracy. There must be intentional participation in the transaction with the view of furthering the common purpose.

Unless you can find from the evidence beyond a reasonable doubt that the defendant whose guilt or innocence you are deliberating on had a corrupt and evil intent and acted with full knowledge that the things being done were done for the purpose of defrauding the United States, you must find that defendant not guilty. Failure to file a correct income tax return does not necessarily constitute fraud. Fraud implies bad faith, intentional wrong-doing and a sinister motive. It is never imputed or presumed and does not arise from circumstances which create only suspicion.

[9272] Fraud on the part of the defendants may never be presumed in a case such as this, but the burden is at all times upon the Government to prove beyond a reasonable doubt that the defendants wilfully conspired by trickery, chicane and deceit to impede, impair, and obstruct the functions of the Treasury Department in the collection of its income taxes. For example, if you find that the defendant Haas or defendant Alprin only performed professional services to the other named alleged co-conspirators, he could not thereby become a member of a conspiracy by merely the rendition of such professional services even assuming that such a conspiracy existed.

The defendants are not on trial here for improper bookkeeping, and the Government cannot prevail merely by proof, whether by inference or by circumstantial evidence, for example, that proper accounting methods required that a transaction or transactions in the books of the Tivoli Trading Co., S. A., accurately reflect the nature of these transactions unless it has been shown by the Government beyond a reasonable doubt that the entries of such transactions, as reflected in the books of the [9273] Tivoli Trading Co., S. A., was for the purpose of wilfully concealing the nature of their business activities or the nature and source of the income of the defendants in order to impede the Treasury Department in determining their true tax liability.

Stated another way: I charge you that it is not enough for the prosecution to show the existence of an agreement and the participation therein of any particular defendant. This alone would not prove that such defendant participated in the agreement "knowingly and wilfully". With respect to each defendant, the prosecution has the further burden of proving beyond a reasonable doubt that such defendant participated in such agreement wilfully; that is, the prosecution must prove that such defendant entertained the specific intention to impede, impair, and obstruct the Treasury Department in the collection of the revenue, and not that he intended some result other than that. If you are not convinced beyond a reasonable doubt that such defendant acted wilfully, your verdict must be not guilty.

You may ask "how can we know whether the [9274] alleged conspirators intended to defraud the United States as charged?". Intent involves a mental attitude, and it rarely can be shown except by inference. Intent is to be gathered

mainly from the surrounding circumstances, the knowledge that the defendant is shown to have of what was being done and the natural inferences flowing therefrom. Criminal intent is never presumed.

In determining the intent of the defendants or any of them, you may consider any evidence before you which aids you in determining whether these defendants intended an attempt to obstruct, impair, impede, blind, throw sand or dust in the Government's eyes, or prevent the Government from ascertaining the source from which income tax should be reckoned.

In determining the issue of intent, you may take into account and consider such evidence of secrecy, deviousness, intrigue and concealment as you may find accompanied the various transactions. Was the concealment, as the Government contends, for the purpose of defrauding the Government? The question of intent is a matter for you, as jurors, to determine and, as intent is a state of [9275] mind and it is not possible to look into a man's mind to see what went on, the only way you have of arriving at the intent of a defendant is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances what the intent of the defendant was at the time in question. Thus, direct proof of wilful or wrongful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such inferences may arise from a combination of acts, although each act standing by itself may seem unimportant. These are questions of fact to be determined from all the circumstances.

In other words, you can decide the intent of the defendants from circumstantial evidence. Circumstantial evidence may be received and is entitled to such consideration as you may find it deserves depending upon the inferences you think it reasonable to draw from such evidence. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case you must be convinced beyond a [9276] reasonable doubt of the guilt of the defendants. Circumstantial evidence consists of facts sought to be established as true. But an inference may not be properly relied upon in support of an essential allegation of an indictment if an opposite inference may be drawn with equal consistency from the circumstances in the proof. Although circumstantial evidence alone or in connection with other evidence, may justify a conviction, great care must be exercised in drawing inferences from circumstances alone, and mere suspicions will not warrant a conviction.

Mere similarity of conduct on the part of various defendants and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, does not without more establish the existence of a conspiracy. An inference of participation in a conspiracy cannot be sustained by mere association and friendship between alleged co-conspirators or the use of the office facilities of one by the other. The fact that a person associates with conspirators with knowledge that they contemplate doing an illegal act does not make him a co-[9277] conspirator, unless he knowingly enters into the conspiracy and assists in the furtherance thereof. Unless the Government proves to your satisfaction and beyond a

reasonable doubt that a defendant knowingly entered into the conspiracy as charged, and that some act was done in furtherance thereof, then it will be your duty to return a verdict of "not guilty", despite the fact that he might have had knowledge that others contemplated doing some illegal act.

Reverting to the original example I gave you of a person innocently making a false statement to a Treasury agent, or innocently filing a false return, if that statement was procured to be made, or if that return was caused to be filed by another individual person who knew it was false and who intended it to have the effect of defrauding the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of income taxes, and who induced it for that purpose, nevertheless neither of those persons could be found to be guilty of conspiracy to defraud. The reason for this is one cannot be a conspirator alone. You must [9278] acquit a defendant here on trial, if you find that he did not know of, or participate in, any conspiracy with any co-conspirator as charged.

Applying this latter principle to the case on trial, if you find that only one person intended to accomplish the fraud on the United States, as charged in the indictment, then you must acquit all the defendants. On the other hand, if you find that the defendants, or any one of them conspired with any other co-conspirator, as charged, even if the co-conspirator is not named as a defendant or co-conspirator in the indictment, then you may find those defendants or that defendant guilty of the crime charged, if you are satisfied beyond a reasonable doubt, that guilt has been proven.

Now, the question that naturally comes up is, What is a reasonable doubt? The words almost define themselves. It is a doubt founded in reason. It means a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt which appeals to your reason, your judgment, your common sense and understanding. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant [9279] duty. It is not sympathy for a defendant. Reasonable doubt is a doubt arising from the evidence, or from a lack of evidence, after consideration of all the evidence. It is not a vague, speculative something but is just such a doubt as would cause reasonable men to hesitate to act upon it in matters of importance to themselves.

Although the burden is on the Government to prove the defendant's guilt beyond a reasonable doubt, this does not mean that the Government's proof as to each item of evidence or as to each link in the chain of alleged events must itself be proved beyond a reasonable doubt. Rather the process of drawing inferences from the proof is to be governed by human experience. The strict requirement as to burden of proof constitutes an overall admonition or warning, rather than a precise yardstick to be applied to each segment of the proof.

It is not necessary for the Government to prove the guilt of the defendant beyond a possible doubt. If that were the rule, few men, however guilty they might be, would be convicted. The reason would be that in this world of ours it is [9280] practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible of mathematical cer-

tainty. In consequence, the law is such that in a criminal case it is enough if proved that the defendant's guilt be established beyond a reasonable doubt—not beyond all possible doubt.

On the other hand, if the prosecution has failed to establish as to any defendant or defendants to a moral certainty and beyond all reasonable doubt any one element of the offense with which that defendant or those defendants are charged and which it is necessary to establish in order to convict, then you must find that defendant or those defendants not guilty.

If all the circumstances taken together are consistent with any reasonable hypothesis which includes the innocence of a defendant, the prosecution has not proved his guilt beyond a reasonable doubt, and it is your duty to acquit such defendant.

Summarizing therefore I suggest that you perform your task upon the following formula.

Each ask yourselves:

[9281] 1—Was there an agreement between two or more persons as charged in the indictment from about June 1, 1946?

If your unanimous answer is "NO"—acquit all defendants.

If your unanimous answer is "YES"—go to the second inquiry, which is

2—Who participated in it?

If your unanimous answer is "None of the defendants" —acquit all defendants.

If your unanimous answer is "Certain persons including one or more defendants", acquit the defendant or de-

fendants whom you exclude and, as to those whom you include go to the third inquiry, which is:

3—Was it done wilfully, knowingly and with evil intent?

If your unanimous answer is "NO" acquit the remaining defendants.

If your unanimous answer is "YES"—go to the final inquiry which is

4—Was an overt act, in furtherance thereof accomplished?

If your unanimous answer is "NO" acquit the remaining defendants.

[9282] If your unanimous answer is "YES" find them guilty.

But remember, before you may convict any defendant you must each be satisfied beyond a reasonable doubt of every element of the formula, upon the evidence in the trial only and in strict compliance with the rules I have given you in this charge.

Your verdict which must be unanimous will be in the following form:

Either: We find all the defendants "Guilty"

Or: We find all defendants "Not Guilty"

Or: We find the defendants (here insert the name or names) "Guilty" and we find the defendants (here insert the name or names) "Not guilty".

[9283] Will counsel and the reporter please come to the bench?

(The following took place at the bench:)

The Court: Without repeating exceptions taken on the Court's rulings and requests to charge, counsel are now invited to state upon the record exceptions to the charge as given.

Mr. Kiendl: All of our exceptions as previously enumerated are reserved, your Honor. We want to take exception to that portion of your Honor's charge which appears on page 21, where your Honor charged the jury that it was not bound or limited to the date charged in the indictment, giving the jury an opportunity to put the conspiracy as far back as they thought necessary. We thought the conspiracy should be charged to some proximity as close as possible to June 1st.

The Court: Yes, I see that.

Mr. Kiendl: I think the rest of your charge was consistent with our interpretation of the law. But there the jury might go back to 1944 or even 1940.

The Court: (To the jury) Ladies and gentlemen of the jury, I charge you in connection [9284] with that portion of my charge where I told you you were not to confine the date to June 1, 1946, but you might go back beyond that and find the conspiracy commenced prior to that date, I charge you that how far back you may go would be only a reasonable period, and thus you could not, for example, go back to 1944. It would have to be within a reasonable period prior to June 1, 1946. You are not free to go back as far as you desire. It has to be, as everything else, governed by reason.

Mr. Kiendl: We except to that portion of your Honor's charge which appears on page 32, the first sentence, third paragraph, the question of whether or not the defendants accomplished what they conspired to do is immaterial to the question of their guilt or innocence.

The Court: I have no comment to the jury on that.

Mr. Kiendl: Page 47, we except to that portion of your Honor's second sentence of the second paragraph, "However, it is possible that Hyman Harvey Klein had recognized their right to an equity in the 'profit holding' corporation as if they were stock- [9285] holders, although no stock was issued or, if issued, the certificates had later been canceled."

The Court: I have no comment to the jury on that.

Mr. Kiendl: And the last paragraph on that same page, your Honor, we take exception to that.

The Court: I have no comment on that.

Mr. Kiendl: On page 48, we take exception to that part of your Honor's charge of the last sentence of the first paragraph on page 48. Shall I read it into the record?

The Court: In that case, you better read the one on the prior page.

Mr. Kiendl: I don't think it is necessary, your Honor.

The Court: All right. I have no comment to the jury on that.

Mr. Kiendl: Our last one is on page 50, the last sentence in the second paragraph.

The Court: No comment.

Mr. Kiendl: That is all we have.

Mr. Bender: With the exception of the [9286] defendant Haas' request to charge which your Honor has

denied and to which we have taken exception, I have no exceptions to your Honor's charge.

The Court: Mr. Donohue or Mr. Goldstein?

Mr. Goldstein: We would like to renew the exceptions previously taken, and in addition there are certain requests we would like to make in view of the context of the charge. For example, in view of the granting of defendant Klein's request No. 20 regarding the fact that Klein did not prepare any of the income tax returns or that he had nothing to do with the preparation of those returns, we should like to have a corresponding charge regarding the defendant Alprin. There is no evidence that he had anything to do with the preparation of any of the returns.

The Court: Weren't you supplied with a copy of defendant Klein's requests to charge?

Mr. Goldstein: Yes, your Honor. We submitted a similar request and your Honor did not choose to include it.

The Court: Of course, that is no reason for me not to give it consideration now. We are [9287] dealing here with justice and not semantics or oversights.

(To the jury) Ladies and gentlemen of the jury: There is no direct evidence before you that the defendant Alprin had anything whatever to do with the preparation and filing of the income tax returns filed by Roer and his wife in 1950 or by Koerner and his wife in 1952 or by Klein in 1948; nor is there any direct evidence that the defendant Alprin was consulted, or that he advised, suggested or directed in the preparation and filing of any of those returns. However, as I have stated before, what inferences are to be drawn from the evidence as a whole is a question for you to determine.

Mr. Goldstein: Your Honor, there is a second instruction which your Honor gave with respect to the defendant Klein, the fact that the moneys reflected in the draft were not his indicated no motive to participate regarding those drafts. Your Honor mentioned to the jury that it was possible for the jury to find that the moneys paid to Alprin were a gift. If it were a gift, it would seem to me it would similarly negate the notion that there was any motive to declare or state that something was a [9288] capital gain, and it seems to me it is in the same category as the other.

The Court: I decline to make any comment further than I have gone.

Mr. Goldstein: We urge upon your Honor to reconsider the ruling regarding Alprin's request 24.

The Court: I shall not. Counsel were not summoned to the bench for that purpose. The exceptions to the Court's charge are not going to be prosecuted in this court for any purpose of anybody getting an extra edge or second summation. That is why we have this system. I am not going to reconsider any of my rulings on the requests to charge. You have your appropriate exception and you will have to be content with that.

Mr. Goldstein: It was my intention to say that as a preface, your Honor.

The Court: Why encumber the record with that which you know I am not going to do.

Mr. Goldstein: There are a number of statements in the record as to the rights of various defendants to do certain things, for example, to keep money in certain places, to make payments to [9289] certain corporations. It seems

to me that the jury should be given the statement of the legal principle that a restriction on the use of money depriving the recipient of the funds of the command and control over the money is on a par with several of the other legal principles which your Honor has announced to the jury, and that otherwise the jury would be permitted to speculate on just what the law is on the holding of moneys which are received subject to restriction as to use, and it seems to me that your Honor should give that instruction without the references to the evidence, particularly in the case, as they were in Alprin's S-23 and S-24.

The Court: I will make no comment on that.

Mr. Goldstein: Your Honor stated to the jury on page 47 that there were certain documents which purported to be receipts canceling subscriptions to stock. We think there ought to be stated to the jury the testimony given by the defendant Alprin as to the documents he saw—I withdraw that at this time, your Honor.

That is all, your Honor.

Mr. Bauman: I refer to page 31 of your Honor's charge, the second sentence from the top, [9290] "A defendant is presumed to be." I am not going to read all that into the record. What I am addressing myself to is "Unless the evidence introduced on behalf of the Government shows them to be guilty of each and every crime," and I am suggesting that the jury be instructed that it need not be evidence introduced on behalf of the Government, that it could be introduced at any stage of the trial.

The Court: You are quite correct.

(To the jury) In determining the issues of fact now being submitted to you, ladies and gentlemen of the jury, you may consider evidence on any issue regardless of what

stage of the case it came into the record, i.e., and only as an example, in determining the guilt of a defendant, you are not confined solely to evidence introduced in the Government's case, but if some evidence came out in the defendants' case that persuades you beyond a reasonable doubt of a certain fact upon which, with others, you predicate guilt of that defendant, you may consider that evidence against that defendant despite the fact that it was elicited in the course of the defendants' case.

[9291] Mr. Bauman: I was beginning to wonder whether that took care of the second one, appearing on page 17 and 18 of your typewritten charge, and I only call this to your Honor's attention, that you may have, starting at the second paragraph on page 17. Here we have written one out that I will submit to your Honor (handing to the Court).

The Court: I think that is emphasizing it too much. I think I illustrated it sufficiently in the charge, and at this late stage to emphasize it I think would be doing an unfairness to the defendants. Therefore, I decline.

Mr. Bauman: I have no further requests or exceptions, your Honor.

The Court: All right.

(To the jury) Ladies and gentlemen, you may take or have sent to you upon request the indictment and each exhibit admitted in evidence during the trial, of course not stricken. You may also, upon request, have any portion of the record read to you or receive further enlightenment by the Court on the law of this case.

Upon retiring to the jury room Juror No. 1 will act as foreman, who will preside over your [9292] deliberations.

and who will when you return announce the verdict to which you agree.

The Clerk will swear the Marshals.

(The Marshals were sworn by the Clerk.)

* * *

Mr. Foreman and ladies and gentlemen of the jury, you may now retire for your deliberations.

(The jury retired at 1:10 p. m.)

* * *

The Court: We will adjourn for lunch.

(Luncheon adjournment taken.)

[9294] (2:45 p.m.)

The Court: Gentlemen, I received the following message from the jury:

"Judge's entire charge." I construe that cryptic message from the jury to mean that they want the charge. Traditionally in this district we do not give the charge in writing to the jury. A year or two ago we had a visiting judge, Judge Dewey, who was an inactive jurist from one of the western states. When he concluded reading his charge, he handed it to the foreman of the jury. Everyone looked askance at such unorthodox procedure, and when he was asked about it he said that was the general practice in the State and Federal courts in his part of the country.

That prompted me to look into it to some degree, and I have as yet been unable to find anything one way or another which makes it either right or wrong. Of course, I do recognize one danger, and that is that the additional in-

structions that I gave after we conferred at the bench would not be part of the charge, but that is not insurmountable, as we could have that portion read back.

[9295] However, before I either grant or deny the request, I should like an expression from counsel.

I have been unable to find any guidance in the books that would indicate whether they are or are not entitled to have it. Based upon pure logic, it would seem to me ridiculous, after having read the charge to the jury and exposed it, to say to them, "We will compel you to rely on your recollection of what you heard said for a droning of two and a half hours, but we won't give you the written words so you can know exactly what was said."

Of course, this isn't a situation where there was any extempore interlineation of the charge. You all had copies and you know the charge was read precisely as it was written, except for those items upon which the jury was instructed after I had almost concluded the reading of the charge.

Frankly, I personally know of no reason why they should not have it, but possibly counsel are better advised about it and I should appreciate an expression from you gentlemen. It is needless for [9296] me to say I do not want to commit reversible error, but I have never found anything granting or denying such a request to have been decided to be reversible error or not.

Mr. Bender: The defendant Haas, speaking for himself, has absolutely no objection whatsoever to allowing this charge as your Honor has given it to us to go to the jury. There is only one hesitation I have, merely as to whether the jury might speculate as to the symbols which appear on

the right hand side of the charge, and as to that I would suggest——

The Court: If I give it to them, I would say that those represent a cross-indexing to the requests that were submitted when the charge was in preparation.

Mr. Bender: I am wondering whether or not it would not be feasible, if we all decide to give it to them or whether we just could not clip those references out, so it would not be necessary to give them any statement as to what it means.

The Court: That would be an alternative.

How do you feel about it, Mr. Kiendl?

[9297] Mr. Kiendl: I have never had a situation of this kind confront me in my practice, your Honor. I am a little concerned about it setting a very unfortunate precedent.

The Court: It is an unfortunate precedent so far as the Southern District, Second Circuit is concerned, but in other parts of the country it has been done. It is convenient to have the key in the margin as a cross reference vis-a-vis the charge and the requests, but still, on the other hand, I can recognize at least this charge in its present form with that information might be a dangerous thing. While it could be solved as you suggest, Mr. Bender, I think that would be an insurmountable task, to clip out all of those references. If you cut them out, then I think you might be inviting speculation as to what was cut out.

How do you feel about it, Mr. Donohue?

Mr. Donohue: I have no objection.

The Court: What is the practice down in Washington?

Mr. Donohue: I have never seen it done before, but I see no reason or logic why it should not be done. In my jurisdiction, if the jury asks [9298] to be charged as to a particular phase again, the Court does so.

The Court: If the jury ask for any one part to be re-read, I will do so.

Mr. Donohue: Otherwise, I have no objection to the entire charge going to the jury.

Mr. Bauman: I have many times thought about it, your Honor. There was a bill authorizing the Court to do just that——

The Court: In the State Legislature?

Mr. Bauman: Yes. That bill did not pass. It was in connection with that that I considered it very seriously, as did the committee of which I was a member.

The Court: Did you find anything on it previously?

Mr. Bauman: We did not. The committee's position and my own position on behalf of the Government is that in giving the jury a typewritten charge that it just invites more difficulty than it solves, and I for one am opposed to it.

The Court: My own notion is that they are likely just to take one or two paragraphs of it and read those and not read the rest, and then they will [9299] be doing just what I told them not to do, emphasize just certain portions.

I am going to deny the request, but if they want certain portions of the charge re-read, even if they want the whole charge re-read, we will do so.

(Jury in box.)

Colloquy

The Court: Mr. Foreman and ladies and gentlemen of the jury, I acknowledge receipt from you of a message reading "Judge's entire charge," which I assume to mean that you would like to have a typewritten copy of the charge as I read it. It may appear to be an anomoly or a paradox, after having it read to you, that I say to you you cannot have it in its written form. However, I think you will recognize very quickly why that is.

Number one, in the written form it contains certain notations of interest to Court and counsel which are no concern of the jury's. That is number one. Number two, there were additional instructions given to you that are not included in the charge as written. Number three, and probably the most important, that if you were to take that charge to the jury room and invite reading only portions of it and emphasizing in your own minds [9300] certain portions to the exclusion or obscurity of other portions, you would be accomplishing the precise thing that the Court told you not to do, and that is to emphasize one section of the charge over the others.

Therefore, on tradition and on the accepted practice, I must reluctantly say to you that you cannot have that which you ask, but that does not mean that you cannot have further instruction. What I did say to you, and I repeat, is that if you want any particular portion of the charge re-read, any question of law expounded upon that may arise in your discussions, you have but to ask for it and it will be re-read to you. However, the device of giving you the written charge to take back into the jury room with you cannot be acceded to.

Colloquy

Was this just a preliminary request for you to embark upon your work or did you have something specific in mind?

The Foreman: Something specific, your Honor.

The Court: What is that?

The Foreman: They would like to have the [9301] four points read at the end of the charge.

The Court: Now that you have brought it up, I am going to emphasize one word in that, "Summarizing therefore I suggest." You will notice I said previously "I charge you." That is a different thing. How you embark upon your task is your business and I am not telling you how to do it. However, to read to you the portion that apparently is of interest to you, it reads as follows:

"Summarizing therefore I suggest that you perform your task upon the following formula.

"Each ask yourselves:

"1—Was there an agreement between two or more persons as charged in the indictment from about June 1, 1946?"

You will notice, and I am enlarging now, to a limited extent, I did not say between two or more defendants, I did not say between two or more co-conspirators, I said, "between two or more persons."

Continuing:

"If your unanimous answer is 'NO'—acquit all defendants.

[9302] "If your unanimous answer is 'YES'—go to the second inquiry, which is

"2—Who participated in it?

"If your unanimous answer is 'None of the defendants' —acquit all defendants.

"If your unanimous answer is 'Certain persons including one or more defendants', acquit the defendant or defendants whom you exclude and, as to those whom you include go to the third inquiry, which is

"3—Was it done wilfully, knowingly and with evil intent?

"If your unanimous answer is 'NO' acquit the remaining defendants.

"If your unanimous answer is 'YES'—go to the final inquiry which is

"4—Was an overt act, in furtherance thereof accomplished?

"If your unanimous answer is 'NO' acquit the remaining defendants.

"If your unanimous answer is 'YES' find them guilty.

"But remember, before you may convict any defendant you must be satisfied beyond a reason- [9303] able doubt of every element of the formula, upon the evidence in the trial only and in strict compliance with the rules I have given you in this charge."

Your verdict must be unanimous.

Do you want anything further?

The Foreman: No.

The Court: All right, you may retire and deliberate.

(The jury retired at 3:00 p. m.)

* * *

Verdict of the Jury

[9304] (At 5.05 p.m. the following occurred in the presence of the jury in the courtroom.)

The Clerk: Members of the jury will answer as their names are called.

(Roll call of jury.)

The Clerk: Mr. Foreman, have you arrived at a verdict?

The Foreman: We have.

The Clerk: How do you find?

The Foreman: All three defendants guilty.

The Clerk: Members of the jury, listen to the verdict as it stands recorded. You say you find all the defendants guilty as charged, so say you all?

(Jury answers affirmatively.)

The Clerk: Members of the jury, listen to the verdict as it stands recorded. You say you find all three defendants guilty, as charged?

(Jury polled.)

The Clerk: The jury is polled.

* * *

[9307] ((Jury excused at 5.10 p.m.)

* * *

[9308] The Court: I would remind counsel that under the rules motions in arrest of judgment and a new trial, Rules 32 and 33 respectively, are required to be made within five days. I construe the five-day limitation in the case of a motion in arrest of judgment under Criminal Rule 34 to be

made within five days after determination of guilty to mean five days from today, because determination of guilt was today.

Now, of course there is less question about the language of Rule 33, which provides for a motion for a new trial to be made on any grounds other than newly discovered evidence within five days after the verdict, and obviously the verdict was today. However, in each instance the Court entertains the right upon appropriate motion within the five-day period to extend the period during which or until which defendants may move either in arrest of judgment or for a new trial or both, keeping in mind that Rule 34 of the Criminal Rules specifically provides that motion in arrest of judgment may be before, with or after motions for a new trial. My own preference in the matter is to deem each defendant as having now moved, unless I [9309] hear an expression to the contrary, for an extension of time to make any motions in arrest of judgment, for a new trial or any other about which they may be advised to make any motions addressed to the verdict, and I generally make those returnable on the same day that I set for sentence.

I am leaving here in a day or two, and I will be assigned back for the week of September 19th for what we colloquially call the motion assignment. However, that will require that on the 19th, which is a Monday, Wednesday the 21st, Thursday the 22nd and Friday the 23rd I will be presiding in Room 318, which is the Criminal Calendar Part, and it would appear to me that between now, August 22, and Friday, September 23rd, would be adequate time for the probation service to work up presentence reports on these defendants. I am assuming of course that the defendants do not wish to take sentence today.

Is that assumption correct?

Mr. Donohue: Yes, your Honor.

Mr. Kiendl: Certainly so far as the defendant Klein is concerned.

Mr. Bender: Yes, your Honor.

[9310] The Court: Therefore, deeming the defendants as moving for an extension of time beyond the five-day period, I extend that time to Friday, September 23, at 10.30 a.m. in Room 318. I also set Friday, September 23rd, at 10.30 a.m. or thereafter as soon as the Court may reach it for sentence. I am directing the United States Attorney to advise the probation service thereof.

Now, on the question of bail: I am not prepared to remand these defendants and until such time as I fix sentence on Friday, September 23rd, my disposition is to continue them in bail, but, of course, there is the question of amount. Am I correct in my understanding that they are presently each in bail at $1000?

Mr. Bauman: The defendant Klein is not. I think his bail is $50,000. However, the other two defendants are in bail of $1000 each. My understanding, sir, is that it is not upon this indictment but upon the first indictment.

The Court: Now we get into the technical problem, do we have a consolidated indictment with the fifth count remaining or do we have the second indictment with the second of two counts upon which [9311] there was a conviction. In any event, I have no compunction whatsoever or feel that any of these defendants is going to try to flee the jurisdiction, and I will continue them in their present bail until sentence.

* * *

[9313] Is there anything further to take before the Court before adjournment?

(No response.)

The Court: Court is adjourned.

* * *

Motion of Defendant Hyman Harvey Klein to Set Aside the Verdict, Etc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA,

vs.

HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALPRIN and ALBERT ROER.

Upon the indictment (hereafter sometimes called the second indictment), the stenographic transcript of the trial and all the proceedings heretofore had in the above-entitled matter, the defendant Hyman Harvey Klein makes the following motions:

1. Pursuant to Rule 29(b) of the Federal Rules of Criminal Procedure, the defendant renews his motion for judgment of acquittal of the offense charged in the second count of the indictment upon all the grounds stated when said motion was originally made at the end of the Government's case and renewed at the close of all the evidence.

2. Pursuant to Rules 29(b) and 33 of the Federal Rules of Criminal Procedure, the defendant moves in the alternative to set aside the verdict of guilty returned against

him by the jury on the second count of the indictment and for a new trial of that count in the interest of justice and particularly, but not exclusively, upon the following grounds:

A. There was insufficient evidence (a) to establish the conspiracy alleged in the second count of the indictment and (b) to connect the defendant Hyman Harvey Klein with that alleged conspiracy.

B. Prosecution of the offense charged in the second count of the indictment is outlawed by the statute of limitations.

C. The judgment of acquittal as to the first three counts of the first indictment (C-144-144) and as to the first count of the second indictment (C-145-147) determined favorably to this defendant such basic issues of fact as not to permit a reasonable finding of guilt of the offense charged in the second count of the second indictment.

D. In denying defendant's motion for judgment of acquittal under the second count of the indictment at the close of the Government's case and at the close of all the evidence, the trial court committed reversible error in applying to the evidence the test of sufficiency applicable in civil cases (i.e. could a reasonable man reasonably find guilt?) rather than the test of sufficiency of evidence properly applicable in a criminal case (i.e. could guilt be found beyond a reasonable doubt?).

E. The trial court committed reversible error in holding that the jury might find on the evidence that the drafts

delivered to or on behalf of Alprin, Koerner and Roer were neither a liquidating dividend nor a commission or bonus, but were for some other purpose, thereby improperly permitting the jury to speculate as to the purpose of those drafts.

F. The trial court committed reversible error in receiving in evidence over the objection of defendants Klein, Haas and Alprin, and as against those defendants, the statements made by Roer and Koerner to others than said defendants, including agents and representatives of the Internal Revenue Bureau and the witness Baker.

G. The trial court committed reversible error in receiving in evidence over the objection of defendants Klein, Haas and Alprin, and as against those defendants, the joint income tax returns of Roer and his wife for 1950 and of Koerner and his wife for 1952.

H. The trial court committed reversible error in receiving in the first instance, and in later refusing to strike, the evidence regarding the so-called "flight of capital" to Canada in September, 1946.

I. After directing judgment of acquittal on the first three counts of the first indictment and the first count of the second indictment, and after striking from the record the testimony and exhibits relating to those counts, the trial court committed reversible error in failing of its own motion to declare a mistrial, on the ground that a fair and impartial trial of the single remaining count was no longer possible, in that the jury could not erase from their minds

the great mass of evidence stricken from the record, nor could they concentrate only on the comparatively meager evidence remaining in the record and pertaining only to the single remaining count.

J. The trial court committed reversible error, after directing judgment of acquittal on the first three counts of the first indictment and the first count of the second indictment, in refusing to strike from the record the items of evidence which he permitted to remain in the record as so-called "background material" relating to the second count of the second indictment.

K. The trial court committed reversible error in refusing to require, at any time during the protracted trial and despite repeated requests by defendants' counsel, that Government counsel make a statement on the record as to the meaning of the second count of the indictment or as to the theory of the prosecution concerning the charge made in that count.

L. The trial court committed reversible error in refusing to instruct the jury in the respects requested by the defendants Klein, Alprin and Haas, respectively.

M. The trial court committed reversible error in instructing the jury in the respects requested by the Government and objected to by the defendants Klein, Alprin and Haas, respectively.

N. The trial court committed reversible error in refusing to hold that but a single conspiracy was encompassed by the first and second counts of the indictment, and that there-

fore judgment of acquittal on the first count required judgment of acquittal on the second count.

3. Pursuant to Rule 34 of the Federal Rules of Criminal Procedure the defendant moves for arrest of judgment upon the ground that the second count of the indictment does not state facts sufficient to constitute an offense against the United States. That count is so vague and indefinite as to deprive the defendant of his constitutional rights under the Fifth and Sixth Amendments to the Constitution of the United States. In the course of the trial the count was in effect rewritten by reason of the meaning ascribed to it by the trial court, and this resulted in a fatal variance which deprived this defendant of a fair trial and of his rights under the Constitution, laws and statutes of the United States.

4. In the event that sentence is imposed upon this defendant and judgment of conviction is entered against him, the defendant moves, pursuant to Rules 38(a), (b) and 46 of the Federal Rules of Criminal Procedure, for a stay of the execution of the sentence and for continuance in the present bail pending appeal from the judgment of conviction, upon the ground that the case involves substantial questions which should be determined by the appellate courts. In addition to the questions stated above, the defendant intends to bring up for review upon his appeal from any judgment of conviction entered against him herein, the order of this Court entered October 1, 1954 in so far as said order denied the motion of this defendant for a bill of

particulars of the second count of the indictment and for a dismissal of that count.

5. In the event that sentence is imposed upon this defendant and judgment of conviction is entered against him, this defendant moves for an enlargement of the bail limits to include continental United States pending final disposition of the appeal to be taken by him from said judgment of conviction.

Dated: New York, New York
September 16, 1955

DAVIS POLK WARDWELL SUNDERLAND & KIENDL
Attorneys for Defendant Hyman Harvey Klein

By THEODORE KIENDL
A Member of the Firm

Motion of Defendant Hyman Harvey Klein to Set Aside the Verdict, Etc.

NOTICE OF MOTION

To:

UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK
United States Courthouse
Foley Square
New York, N. Y.

SIR:

PLEASE TAKE NOTICE that the undersigned will bring the above motions on for hearing before this Court in Room 318, Federal Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 19th day of September, 1955 at 10:30 A. M. of that day, or as soon thereafter as counsel can be heard.

Dated: New York, New York
September 16, 1955

DAVIS POLK WARDWELL SUNDERLAND & KIENDL
Attorneys for Defendant Hyman Harvey Klein

By THEODORE KIENDL
A Member of the Firm

Motion of Defendant Haas to Set Aside the Verdict, Etc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA,

vs.

HYMAN HARVEY KLEIN, *et al.*,
Defendants.

PLEASE TAKE NOTICE, that upon all of the proceedings heretofore had herein, the defendant, MAURICE HAAS, will move in the United States District Court, Southern District of New York, before the Hon. Sidney Sugarman, United States District Judge, in Room 318 of the United States Court House, on September 23, 1955, at 10:30 A. M., or as soon thereafter as counsel can be heard, for an order:

(a) TO SET ASIDE THE VERDICT RENDERED BY THE JURY ON AUGUST 22, 1955, AND FOR A JUDGMENT OF ACQUITTAL on the following grounds:

1. The evidence was insufficient to establish beyond a reasonable doubt the existence of a conspiracy alleged in the fifth count, and in any event, even if there was such proof of the existence of a conspiracy, that the defendant, MAURICE HAAS, was a member of such alleged conspiracy.

2. Contrary to the evidence and to the court's instructions that the $35,000.00 payment to La Ribera

was a loan from Tivoli, and any other contention by the Government would be against the weight of the evidence (R. 7331-7332), the Government in its summation to the jury successfully argued and urged upon the jury that the $35,000.00 payment to La Ribera was not a loan but a commission paid to MAURICE HAAS through the subterfuge of La Ribera, as reflected in the Tivoli journal, and that both Klein and Haas were guilty of "outright" and "deliberate" lies in contending that it was a loan (R. 9140-9143, inclusive). In so doing, the Government urged upon the jury a verdict of guilty as to MAURICE HAAS on a basis contrary to the evidence, the court's holding, and wholly without foundation and support. There can be little doubt that the verdict of the jury was based primarily upon this contention of the Government.

3. In urging upon the jury in his summation that the $35,000.00 payment to La Ribera was not a loan but was in fact, at the time the check was issued, income to Haas, concealed through the subterfuge of the foreign corporation, La Ribera, the Government effectively asserted a claim of a separate conspiracy between Klein and Haas to evade payment of a proper income tax on the $35,000.00, which was totally unrelated to the conspiracy charged in the fifth count. Such a conspiracy would have ended upon any construction by the time Haas filed his individual tax return in March, 1950, and was, therefore, outlawed by the three year statute of limitations at the time when this indictment was returned in 1954.

4. There is no evidence whatsoever to show any conspiracy to impede or impair the functions of the Treasury Department in the collection of income taxes which is the charge in the fifth count. Evidence, if any, to support a charge of impeding and impairing the functions of the Treasury Department in the assessment and determination of the true tax liability of the defendants is not evidence sufficient to sustain a charge of impeding and impairing the function of the Treasury Department in the collection of taxes allegedly due from the defendants.

5. The Government's proof indicates that the fourth and fifth counts are but a single conspiracy to commit income tax evasion by these defendants through the alleged means of concealment of their business activities and their income which can not be split into two separate counts; so that the judgment of acquittal on the fourth count must bar a conviction on the fifth count.

6. The fifth count is unconstitutionally defective in that it is vague, ambiguous, and fails to state a crime. The court itself on many occasions during the trial was required to compel the Government to state the nature of the charge which the Government tried to do, varying its position from time to time, and upon each occasion stating a different and new meaning. As a result, the court was compelled to rewrite and amend the indictment to permit a conviction upon grounds not charged anywhere in the fifth count.

7. The fifth count was barred by the three year statute of limitations. Neither the tax returns of Alprin, Koerner and Roer nor the statements of the defendants given to the Bureau of Internal Revenue could in any way extend the date when the alleged conspiracy was completed.

8. The defendant Haas testified before the Grand Jury which returned the present indictment under the compulsion of a subpoena, and was not informed at that time of his right under the Fifth Amendment to the Constitution to refuse to answer questions which might incriminate him, although at that time the Government believed that the Grand Jury would return an indictment against Haas. This motion was made in or about July of 1954, and was denied by Judge Palmieri in *United States* v. *Klein, et al.*, 124 F. S. 476.

9. Such other and further grounds urged for judgment of acquittal at the close of the Government's case.

(b) FOR ARREST OF JUDGMENT on the following grounds:

1. The fifth count is unconstitutionally defective in that it is vague, ambiguous, and fails to state a crime.

2. Defendant Haas was compelled to testify before the Grand Jury which returned this indictment under the compulsion of a subpoena, or without being advised of his constitutional right against self-incrimination at a time when the Government knew and had reason to believe that the Grand Jury would return an indictment against him;

and for such other and further relief as to this court may seem proper.

Dated: New York, N. Y.
September 20, 1955.

Yours, &c.,

LOUIS BENDER,
Attorney for Defendant Haas,
Office & P. O. Address,
170 Broadway,
New York, N. Y.

To:

HON. PAUL WILLIAMS,
United States Attorney,
Southern District of New York,
MARTIN CARMICHAEL, JR., Esq.,
Assistant U. S. Attorney,
Of Counsel,
United States Court House,
Foley Square,
New York, N. Y.

Motion of Defendant Alprin to Set Aside the Verdict, Etc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA,

vs.

KLEIN, *et al.*,

Defendants.

Please take notice that the defendant Morris O. Alprin will move before Judge Sidney Sugarman of this Court on September 23, 1955, at 10:30 A. M., upon all of the proceedings heretofore had herein, to set aside the verdict and for a judgment of acquittal, or for new trial, or for arrest of judgment upon the following grounds:

I. MOTION TO SET ASIDE VERDICT AND FOR JUDGMENT OF ACQUITTAL

1. There is an insufficiency of evidence regarding the defendant Alprin under the fifth count.

2. The proof under the fifth count demonstrates that it is part of the conspiracy charged in the fourth count. It was, therefore, encompassed within the fourth count and should have fallen with it.

3. There is a fatal variance between the fifth count's allegation of a single conspiracy and the proof of several

conspiracies. Under the circumstances of this case, where the proof regarding each conspiracy is not short and simple, *United States* v. *Lotsch*, 102 F.2d 35, 36 (2 Cir., 1939), proof of more than one conspiracy requires that a judgment of acquittal be entered. *Berger* v. *United States*, 295 U. S. 79 (1935), as construed in *Kotteakos* v. *United States*, 328 U. S. 750 (1946).

4. There is no proof whatever of impeding the collection of taxes, as distinguished from assessment of taxes (i.e. determination of tax liability). Only the former is charged in the fifth count.

5. Where the proof shows that a conspiracy to evade income taxes is charged under the guise of a conspiracy to defraud the United States, the latter must fall.

6. The conspiracy charged in the fifth count is barred by the three year statute of limitations, which is applicable here.

7. The fifth count was rendered unconstitutionally vague and uncertain, in the course of trial, by the frequent changes of position by the Government and the Court as to its meaning, thereby depriving the defendants of their constitutional right, under the Fifth and Sixth Amendments, to be apprised of the charges against them and to be free from the danger that they might again be placed in jeopardy for the same offense.

8. The admission in evidence as "background" of what was in essence a substantial outline of the Government's

case on the first four counts, placed the defendants on trial for matters and offenses not charged in the fifth count and hence deprived them of a fair trial and of due process of law, in contravention of the Fifth and Sixth Amendments to the Constitution.

9. The defendant Alprin was compelled by subpoena to testify regarding the subject matter of this indictment at a time when he was being proceeded against before the Grand Jury. He was not informed at that time of his right to refuse to testify. This was in violation of his rights under the Fifth Amendment and 18 U. S. C. § 3481. See Motion to Dismiss Indictment for Violation of Fifth Amendment, filed July 1954 and testimony of Thomas Hill, S. M. 3285-3286.

II. Motion for New Trial

1. The verdict of the jury is contrary to the weight of the evidence.

2. The verdict is not supported by substantial evidence.

3. The Court erred in denying defendant Alprin's motion for judgment of acquittal, made at the conclusion of the evidence.

4. The Court failed to segregate the facts and law applicable to each of the several separate conspiracies allegedly proved under the Fifth Count, as is required by *Berger* v. *United States*, 295 U. S. 79 (1935) and *Kotteakos* v. *United States*, 328 U. S. 750 (1946).

5. The defendants were substantially prejudiced and deprived of a fair trial because

a. The Court, in effect, amended the indictment, which charged as impeding of the *collection* of taxes, so that defendants found themselves tried for impeding the assessment of taxes—that is, the determination of liability for tax.

b. Despite the fact that the heart of the case against the defendant Alprin was the holding of certain funds and the failure to report them to the Government as income, the Court denied defendant Alprin's requests that the jury be instructed regarding the tax consequences of such holding of funds and the relationship of such tax consequences to the charge of this indictment.

c. The Government either refused to state its position, or changed its position, regarding the Fifth Count time and again during the course of the trial. The effect was to prevent the defendants from learning with any precision what they had to meet.

d. The "background" evidence which the Court allowed to remain in the case, by denying defendants' motions to strike it, was overwhelmingly prejudicial. It had the effect of leaving before the jury the basic outlines of the first four counts, thereby placing the defendants on trial for matters no longer properly before the jury.

e. The cumulative effect of the testimony regarding the first four counts which were dismissed at the close

of the Government's case, was such as to make it impossible for the jury to render a verdict on the evidence relating to fifth count alone.

6. The Court erred in charging the jury and in refusing to charge the jury as requested. Particular reference is made to

a. the Court's erroneous denial of the requests to charge of the defendants Alprin, Haas, and Klein;

b. the granting of the Government's requests to charge; and

c. the granting of the defendant Klein's requests numbered 17 and 23.

7. The Court erred in instructing the jury,

a. at S. M. 9221, that the government is given greater "leeway" in showing "background" in conspiracy cases, thereby conveying to the jury that a lesser quantum of proof than that ordinarily required would suffice here.

b. at S. M. 9257 and elsewhere, that the defendants had the "duty to supply those facts as required by law" without stating what law required that the facts involved herein be supplied to the Government.

c. at S. M. 9287, that although Alprin had nothing to do with the preparation and/or filing of the tax re-

turns of any of the other defendants or co-conspirators, the "inferences . . . to be drawn from the evidence as a whole" were for the jury.

8. It was prejudicial error to invite the jury, at S. M. 9268, to speculate on "why they (the defendants) acted as they did," in view of the absence of evidence in the record.

9. It was error, at S. M. 9274, to use the phrase "throw sand [or dust, etc.,] in the Government's eyes". Such colloquialisms could only make more obscure what is at best a vague and ambiguous charge.

III. Motion for Arrest of Judgment

1. The fifth count is vague and indefinite, in contravention of the Sixth Amendment to the Constitution of the United States. It does not state facts sufficient to constitute an offense against the United States.

2. Defendant Alprin was compelled by subpoena to testify regarding the subject matter of this indictment at a time when he was being proceeded against before the Grand Jury. He was not informed at that time of his right to refuse to testify. This was in violation of his rights under the Fifth Amendment and 18 U. S. C. § 3431. The Court was, therefore, without jurisdiction to proceed to trial.

Defendant also joins in any of the grounds for acquittal, arrest of judgment or new trial advanced by the other defendants in this cause.

F. Joseph Donohue
503 D Street, N. W.
Washington, D. C.

Michael Kaminsky
122 E. 42nd Street
New York, N. Y.
Attorneys for Defendant Alprin

Of Counsel:

Abraham S. Goldstein
503 D Street, N. W.
Washington, D. C.

To: United States Attorney
United States Court House
Foley Square, New York, N. Y.

Argument of Defendants' Motions After Verdict

[9317] New York, September 23, 1955;
10.30 o'clock a.m.

TRIAL RESUMED.

Present:

Mr. Bauman,
Mr. Tyler,
Mr. De Franco,
Mr. Carmichael.

Mr. Kiendl.
Mr. Donohue.
Mr. Bender.

The Court: All right, Mr. Kiendl.

Mr. Kiendl: If your Honor please, on behalf of the defendant Klein we have three motions that we would like to make. We have prepared a notice of motion in writing, submitted it to the Government, and I think your Honor has the original before you.

The Court: Yes.

Mr. Kiendl: Those three motions are, first, a motion for a judgment of acquittal renewed on precisely the same grounds that were argued before [9318] your Honor at the close of the Government's case and again at the close of the entire case.

Our second motion is in the alternative, to set aside the verdict of guilty on a number of enumerated grounds which

we think clearly reveal to the Court precisely why we are making that motion.

And our third motion is a motion for the arrest of judgment, attacking the sufficiency of the second count of the second indictment which was called count 5, I think, during the course of the trial.

We have argued the substance of those motions before your Honor both orally and in writing at some length. We see no purpose whatever to be served by a repetition of those arguments, and we submit the motions for your Honor's consideration and determination.

The Court: Does the Government wish to be heard?

Mr. Bauman: Only to note my formal opposition and to indicate, as Mr. Kiendl already has, that these points have been previously made and determined adversely.

The Court: Decision reserved except, [9319] of course, as relief requested in the notice of motion in the fourth point might otherwise be indicated later this morning, i.e., for a stay.

Mr. Kiendl: That we were holding until your Honor got to the sentencing, and we would like to be heard in connection with the sentence.

The Court: Yes.

Defendant Haas.

Mr. Bender: Your Honor, the defendant Haas makes two motions as set forth in the notice of motion which has been filed in this court and a copy of which has been served upon the Government, and that is to set aside the verdict rendered by the jury and for a judgment of acquittal, and the grounds are set forth in the notice of motion, and I don't think it will serve any purpose at this time, your Honor, to take the Court's time in restating them.

The second ground for the defendant Haas's motion is for an arrest of judgment on the ground that the fifth count or, technically, the second count of the second indictment is unconstitutionally defective in the sense that it is vague, ambiguous and fails to state a crime.

I would like to make one comment, your [9320] Honor, which has already been made, I believe, to your Honor during the course of the trial, but I think in a little different form, and that is this:

In this fifth count the defendants are charged with an obstruction or impeding or impairing the functions of the Bureau of Internal Revenue in the collection of its income taxes. I think your Honor has indicated approval during the course of the trial with the Government's claim that, notwithstanding the fact that these defendants may not have owed a penny of tax to the Bureau of Internal Revenue, that is to say that their tax returns reflect a complete and proper payment of tax, that nevertheless, if they engage in any activity, the purpose of which would be to prevent the Government from being able to determine whether they owed a tax, that is the conspiracy charged in the fifth count.

I think your Honor is aware that that is a very novel contention, and it is one of certainly at least to my knowledge first impression.

It means this: that the fifth count in reality charges a conspiracy to commit evasion of taxes, because the language of the fifth count, in setting forth the means whereby the conspiracy was [9321] accomplished, namely a concealment of business activity and income of these defendants, is exactly the same as the means set forth in the fourth count with this exception: that in the fourth count it is not set

forth that the tax returns of Alprin, Koerner, Roer and Haas were involved, whereas it is so set forth in the fifth count.

The Government urged upon your Honor to sustain its position against the defendant Haas that the defendant Haas's tax returns were involved in the fifth count even though they did not set it forth on the ground that the Government does not have to set forth all the means whereby a conspiracy is committed. You upheld that argument, and for that reason evidence was permitted as to this tax situation on La Ribera.

The same argument applies with regard to the fourth count. The Government did not have to, under the fourth count, allege that the tax returns of Alprin, Koerner, Roer and Haas were involved in the fourth count. You recall that was their argument in order to sustain the difference between the fourth and fifth counts.

We submit that, inasmuch as the Government could have offered the same, identical proof that it [9322] offered in the fifth count under the fourth count, in effect what you have is a fifth count of conspiracy to commit income tax evasion. Since your Honor has held that these defendants did not commit income tax evasion under the fourth count, the fifth count had to fall, and I want to say one other thing.

The Supreme Court has held that the means whereby you can show that income tax evasion was committed, by way of illustration, is two sets of books, falsification of records, use of sham corporations, and other instances of like nature.

The Court: Now even net worth computation.

Mr. Bender: Yes. But in this case we have no question of net worth computation.

The Court: That is true.

Mr. Bender: Now, if, as the Government has urged under the fifth count, the defendants commit a crime, even though they don't owe a cent in tax, then obviously whether or not you had falsification of records, whether or not you had two sets of books, whether or not you had sham corporations, there would be no conspiracy to evade since no tax was due [9323] and owing.

Yet in the fifth count the very means which would be insufficient to prove a conspiracy to evade taxes is now contended by the Government and upheld by this Court to be the basis of the defrauding under the fifth count.

If you remember, your Honor pointed that up in his charge.

The Court: I cannot go along with that because my thinking is channeled in the line not of a conspiracy to evade. That, too, was involved in the fourth count addressed to the first three substantive counts, and I granted an acquittal on those four. But here you have a different conspiracy. You have a conspiracy under Title 18, Section 371, to impede and impair, and I think that is the Government's position, and I say it is a novel question and one that should be tested and one on which no defendant should be required to pay a fine or go to jail until he has had a full opportunity to test it, and if I am wrong the Appellate Court won't hesitate to tell me.

But I think that the second count of the second indictment, to which we have referred as the [9324] fifth count, charges not a conspiracy to evade but a conspiracy to im-

pede, impair, obstruct and delay, and I say that, if two or more persons get together and conspire to prevent the Government from ascertaining the true income tax liability of a taxpayer, regardless of whether he has any additional liability or not, that is the crime.

I realize it is a novel question. I realize it is fraught with danger as to the extent that the conspiracy statute may be in the future used. But that is not the concern of the Court. If the Government has divined a means of employing Section 371 beyond which the Congress originally intended, then correction will have to come from the Congress, not from the Court.

I fully understand your argument, but I wish to point out to you that my construction of Section 371 is not that there is a charge here in the fifth count of a conspiracy to evade but that the charge is that there is a conspiracy to impede, impair, obstruct and delay the governmental function of determining whether or not there was an evasion.

Mr. Bender: I know your Honor has maintained that position, and I only want to point out two things, [9325] if I may, in answer to it.

The Government has attempted before, and it has been adjudicated in the Supreme Court of the United States, to frame an indictment in the defrauding language of impairing, impeding the functions of a department of the Government, and what comes to mind is the Bridges case, and while that involved a different legal point, an ultimately different legal point, yet the problem is the same in this sense, and, if I may take a minute, I would like to point it out.

The Court: Certainly. That is the purpose of your argument.

Mr. Bender: The Congress had enacted a Wartime Suspension Act which suspended the statute of limitations on frauds against the Government during wartime. Your Honor is familiar with that. Now, any offense, of course, which did not involve as an essential ingredient of it a fraud against the Government, the statute of limitations for that was the normal three years instead of six years.

The Government indicted Bridges in one count [9326] charging that he conspired with others to defraud the United States by impairing, impeding, obstructing and interfering with the operations of the Naturalization Department by filing a false statement in which he said he was not a Communist when he should have known that he was or he was.

The Government contended that that count, since it required a specific intent or proof of a specific intent to defraud, came within the Wartime Suspension Act and, therefore, the statute of limitations should be six years. That was count 1 of that indictment.

The Supreme Court said no. Merely because you frame your language in the second half of 371 "a conspiracy to defraud the operations of the Naturalization Department," that doesn't mean that that is the conspiracy. The proof to sustain that indicates that it is nothing more than a conspiracy to commit the substantive crime, and therefore the Wartime Suspension Act did not apply.

Here the proof that the Government offered to sustain the fifth count or the second count of the second indictment was exactly the same as it would offer to prove a conspiracy to evade taxes, with one [9327] exception, and that is the technical expert getting on the stand and saying that he

owed so much and he paid so much and he should have paid the difference.

We know, your Honor, that the test of identity of offenses is proof, and if the proof here showed conspiracy to evade taxes, then we say the fact that they used the language "conspiracy to defraud by impairing, impeding," et cetera, is immaterial, and this is why it is important, because the Government could take every alleged conspiracy to commit evasion of taxes and say, "We are not going to go through the complicated proof to show a conspiracy to evade taxes."

For example, in this particular case they would have to go through a complicated technical question as to whether the defendants had a right to use a capital gains as distinguished from ordinary income. They say this: "No, we don't have to do that. We will charge every conspiracy to evade taxes in the language of the conspiracy to defraud by impairing, impeding, and obstructing the functions of the Bureau of Internal Revenue." That is the gimmick that the Government is employing in the fifth count and which the Supreme Court struck down in the Bridges case, [9328] and I only call that to your attention again, your Honor, because I believe the mere use of the language is not a criterion as to what the crime is.

The Court: I will read your papers. Decision is reserved.

Mr. Donohue: If it please your Honor, the defendant Alprin has presented to your Honor, as indicated by the notice before the Court, in the alternative a motion to set aside the verdict and for a judgment of acquittal, a motion

for a new trial and a motion for judgment. These matters have been substantially presented to the Court before, and I shall not urge them further except to ask your Honor to give them the consideration that your Honor shall.

I am intrigued with the argument just made to your Honor by my learned associate, and I would like to adopt it since I was the victim of the error in the presentation of the Bridges trial. I would therefore like to adopt his argument.

The Court: Very well.

Mr. Bauman: May I note for the record my opposition to all motions?

The Court: Yes, of course.

[9329] Mr. Bauman: And if your Honor cares for me to reply to Mr. Bender, I shall. I would like to say just one thing which is the point Mr. Bender's argument proceeds on the theory that the proof was identical on the income tax evasion conspiracy and the one on which they were convicted.

I am sure your Honor is well aware of the fact that that is not the Government's position, that a great deal of the proof which was offered on the first four counts was stricken down, and properly so, once it was determined that the Government had not made out a prima facie case, and the overwhelming bulk of what was admissible with relation to income tax evasion had no admissibility with relation to this conspiracy, and the facts are therefore not at all identical, not in the sham nature of the corporations which was of the essence of the Government's position on the first four counts, not in the duration of the term in

which it was specified the first four counts covered, and as opposed to the fifth count.

In other words, I do not accept Mr. Bender's argument on the law, even assuming that the facts were the same. But I recommend and represent that his [9330] assumption in his argument that the facts were identical is not borne out by the events that transpired.

The Court: Decision reserved on all motions on all defendants. And now, while counsel at the counsel table will proceed to the question of sentence which is on the calendar for today, before I call upon the defendants to make such expressions that they are entitled to make under the rules I ask the Government if it has any statement to make.

Mr. Bauman: I do, your Honor.

May it please the Court, your Honor, do you want me to proceed first?

The Court: Yes.

Mr. Bauman: Your Honor has heard the facts of this case and knows them so very well that it would be nothing but a waste of time to review them. Similarly, your Honor is in possession of a full probation report, and as to the background of these defendants I shall rely on that excellent arm of the Court.

However, there are certain facts that I think should be reviewed in connection with the sentence your Honor is about to impose. At this [9331] point the facts are beyond dispute. They have been determined against the defendants. In my own opinion the jury reached the only decision that was proper under the circumstances.

These defendants now stand before the Court charged with one of the most serious crimes in existence, a conspiracy to defraud their own country. The Court has before it three men who wilfully, deliberately and criminally conspired to defraud the United States by impeding the Treasury Department in the collection of its revenues. That means that these defendants conspired to engage in economic subversion of the United States, and that to me, your Honor, is a very real kind of subversion because that type of conspiracy brought to its fruition on any large scale must necessarily undermine the economy of the United States which is based on the proper exercise of the trust reposed in each citizen by making him a self-assessor of his taxes and in requiring him not to impede the Government in the determination or the collection of those revenues.

These defendants, who had made fortunes, conspired to becloud, to confuse and to stand in the [9332] way of the very government to which they owed their allegiance. The Government represents that this is one of the most flagrant cases that has come to its attention and that these defendants are deserving of very severe punishment. Their acts were deliberately planned and extended over a very long period, and although they had many opportunities to turn back, they never did. They persisted in their criminal activity, they persisted in their activities in attempts at beclouding up to and including the trial of the case before your Honor.

Chief among the defendants, of course, is the defendant Hyman Harvey Klein who is, in the opinion of the Government, a disgrace to the country of his citizenship, a country

that had bestowed upon him every blessing that democracy had to offer, a man without conscience who sought to defraud his country when he owed it his full cooperation.

As to Alprin and Haas, you have two professional men who cheerfully sold their birthright for a mess of pottage, professional men sworn to uphold the constitution of the United States who made their oaths a mockery and a sham when they should have [9333] served as examples to their fellow Americans.

Your Honor, the Government does not seek retribution. It asks for a punishment fitted to the crime. The Government does not seek revenge. It asks for justice. Thank you.

The Court: Mr. Kiendl, I am going to ask that the defendants be brought within the rail.

The Clerk: Alprin, Haas and Klein, step forward, please.

The Court: I am not going to ask that they remain standing. They may be seated.

Mr. Kiendl: May it please the Court, since the verdict in this case was returned last Monday your Honor is undoubtedly aware of the fact that there have been a number of articles published in one of the papers severely criticising the leniency of certain federal judges in the imposition of sentences in tax evasion cases.

Those articles did not mention this case and were perhaps not directed to this case at all, but they came at a most unfortunate time, and in view of those articles I would like your Honor's indulgence for just a few brief minutes to point out to your Honor why [9334] we think that the conviction in this case calls for the imposition not of the severe sentence that Mr. Bauman suggested should be imposed but of a minimum sentence under the statute.

We have made not the slightest attempt to counteract the effect of any of those articles or to have anyone communicate with your Honor by letter or otherwise to influence you in your determination of what an appropriate sentence should be, but we would like to point out that there are factors in this case which lead us as advocates for Mr. Klein to urge upon your Honor the imposition of the most minimum sentence that your Honor thinks fitted to the crime of which he has been convicted.

This trial was an exceedingly protracted one. It took the better part of five months, and the most of that time was devoted to Mr. Bauman's vigorous insistence that Mr. Klein was before the Court as a tax evader of gigantic proportions. After over two months of trial your Honor acquitted Mr. Klein by a judgment of acquittal of the charges of tax evasion contained in the first three counts and of the charge of conspiracy to evade taxes in the fourth count, and then about a [9335] month was taken to pass on the motions to strike out the great bulk of the evidence that had been introduced by the Government unsuccessfully to prove the first three counts.

The fifth count, the remaining count, the second count of the second indictment, was not an indictment for tax evasion at all, and now Mr. Klein stands before your Honor not as a tax evader, not as a conspirator to evade taxes. The fact of the matter is that we proved conclusively at the trial of this action that Mr. Klein had recognized his tax obligations to his Government in full and down to the last dollar, had reported them accurately and correctly, and had paid to the Government of the United States in the year 1947 for his income taxes all that was due, an amount of over $1,200,000.

What was the charge on which he has been convicted? It was a conspiracy to defraud the United States by impeding the Tax Collector in the performance of his duties of investigating, ascertaining and collecting taxes. That is the only charge of which he stands convicted. And, while we do not minimize it as anything that is not to be taken seriously, there are certain factors in connection [9336] with that count that your Honor, we think, should take into consideration in imposing sentence.

First is the one that your Honor has suggested this morning, that this is an entirely novel question, one that has not been litigated before so far as we know, and must go through an appellate court. The Government has not taken the very extreme position that it has taken in this case so far as we know heretofore and certainly not with any degree of success.

During the course of the trial and during the course of the arguments before your Honor we pointed out that, although the charge was a conspiracy to defraud, there was no attempt on the part of the Government to prove that the Government was actually defrauded.

We recognize that that is not an essential element of the crime of conspiracy to defraud, Conceivably people might conspire and attempt to do something and, almost after taking the first step, be stopped abruptly and not succeed in their conspiracy, and in that event they would still be guilty of the crime under the statute, defrauding the Government in any manner or for any purpose.

[9337] But in sentencing these defendants, and particularly the defendant Klein, we do urge upon your Honor the importance of considering that this alleged conspiracy not

only did not succeed but was doomed to failure from its very inception. It was impossible that it could succeed because of these checks that we will be coming to in a minute for some $750,000. The Government knew all about them, knew all about the Cuban corporations. In fact, they served subpoenas demanding production of the books and records of those corporations at the very inception.

We also point out to your Honor as one reason for a lenient sentence that there were no substantive crimes charged here against the defendants Roer or Koerner or Alprin. There were no charges against those three defendants that were similar to the charge against Mr. Klein in the first three indictments and no charge that Mr. Klein aided and abetted them in filing their returns in 1950 and '52, claiming these long term capital gains, and there was no charge of any conspiracy for tax evasion in the case of Roer or Alprin or Koerner's returns in 1950 or 1952, and the last thing we want to mention to your Honor in connection with the sentence is the fact that cannot be disputed [9338] that two of the principals, Mr Roer and Mr. Koerner, were not even indicted under the fifth count or the second count of the second indictment. Mr. Roer was not even named as a defendant or a conspirator, and Mr. Koerner was only named as a conspirator.

Under those circumstances we think it is clear that the Government is not warranted in asking, as it does, for the imposition of severe punishment. This case, we think, calls for a lenient sentence, and we ask with all the sincerity at our command to have your Honor impose such a sentence, and we shall later ask your Honor to stay its execution pending an appeal.

Mr. Bender: I am glad Mr. Kiendl, your Honor, mentioned the recent newspaper articles because it is rather ironic that the defendants here stand charged with impeding or obstructing the functions of the Bureau of Internal Revenue, and yet on the eve of sentence the Commissioner of Internal Revenue, through the intervention of a great newspaper, could almost in the same breath be said to be impeding and obstructing the functions of the independent exercise of judgment by the judiciary of this court.

[9339] It would be very interesting if it were ever to appear that the release of the newspaper articles were timed to coincide with the sentence of my client in this case. I do say this: that I do not make such a charge, but I certainly think that it is a fit subject for inquiry.

I know that Mr. Bauman, who has been essentially fair and honorable during this entire prosecution, and the present United States Attorney would never be a party to such a thing. Yet obviously, if the articles were timed to be released at the direction of the Commissioner of Internal Revenue, an official of the executive branch of this Government, to influence this Court in the sentence, it would be pretty much like a conspiracy to impede, impair and obstruct justice.

The Government urged in our case that we don't have to succeed in our conspiracy. We didn't have to show that we in any way prevented the special agents of the Intelligence Division from learning whether we owed a tax. It was still a crime. I know that this Court will not be influenced by those articles, and so I know that those articles could not succeed.

[9340] Nevertheless we reach a point where we well might ask how my client could stand before a judge who

has a probation report before him, who has sat for five and a half months, and who is supposed to hand out a rigid and rote sentence because some official of the Executive Department says he should do so.

Your Honor, we have come a long way from the day when judges handed out rigid and rote sentences based upon the nature of a crime. I am happy to say that today the federal judiciary in my opinion has handed out sentences based upon individual factors aside from merely the charge of the crime and some idea of getting retributive justice. The articles themselves never once indicated that they spoke to the United States Probation Office. They never spoke to the United States Attorneys' Office. They never once spoke to defense counsel to find out what circumstances existed to warrant the federal judges and the United States to impose suspended sentences.

Here, for example, is my client, a lawyer, certified public accountant. He stands convicted by a jury on a technical charge in the fifth count of novel impression. His reputation up to this time [9341] has been beyond question. He has had a long and successful practice in the accounting profession and in the law profession.

Ordinarily our courts have held that where an individual engages in an act and the law is such that it could be honestly and clearly said that the act that he performs is not a crime, he will not be guilty of that act even though it should eventually be a crime.

Here my client stands convicted before you on an offense about which there is such doubtful legality that it can almost be said that at the time he engaged in his accounting services for Mr. Klein and these corporations he never

intended to commit any crime. Yet the Government says that he is guilty of economic subversion of the United States, he has defrauded his country, and this is the most flagrant case that came to his attention.

My client is going to be severely punished because of this conviction unless the Circuit Court of Appeals says that the Government is wrong, and I earnestly believe that that will be the verdict up above. He faces a loss of his CPA license. He [9342] faces a loss of his legal license. He faces a loss of his practice that he has built up over all these years.

In that respect he is in a different position from the ordinary layman because his punishment, if your Honor sees fit to impose a jail sentence, would be much greater than the ordinary layman. In addition to a jail sentence he would also have the loss of his licenses, as a certified public accountant and as a lawyer.

I ask your Honor to take that into consideration. I ask your Honor to also realize that the mere conviction itself for a professional man is a terrible, terrible punishment. I ask your Honor to take into consideration the fact, as Mr. Kiendl brought out and as I just earlier did, that the most extreme leniency should be shown in a case where the Government has such a questionable indictment of novel impression.

While it may be believed, your Honor, that after a long trial and a conviction by a jury the defendant should get a jail sentence, I believe that such a theory places upon a man, who believes [9343] he is innocent and goes to trial, the risk of a greater punishment if there be a conviction than if he should plead guilty, and I don't think that should be

law, and I don't think that should be the measure of justice to be handed out by your Honor.

Mr. Donohue: If it please your Honor, in the imposition of sentence the Court participates in the function of the divinity, and I must add to what has been said by my associates because the newspaper publicity to which reference has been made appeared in my home city, and I am sure it appeared elsewhere throughout the United States.

It was in my impression a deliberate attempt on the part of the high administrative official and an American newspaper to intimidate not only this Court but every Federal Court in the United States before which such matters may come and an attempt upon the part of that administrative official and that newspaper to usurp the prerogative of the judge in the imposition of sentence which would substitute for the experience of the Court, the peculiar knowledge of the Court in the imposition of sentence which has resulted either from a full understanding of the offense, having heard [9344] the evidence before a trial, supplemented by a careful pre-sentence report, and arrogate to this high administrative official and to this newspaper the right to determine the punishment that should be imposed.

I have no doubt, having been privileged to appear before your Honor nearly every day for five months, and having found your Honor extremely cautious and careful in the preservation of the rights of these defendants, that your Honor, in so far as would be humanly possible, will not permit your statutory responsibility, and a responsibility which I know your Honor feels deeply in conscience, to be exercised by someone else no matter who that someone else may be.

I know unless and until the verdict of the jury has been set aside that I am bound by it. But I feel I would be derelict in my responsibility if I did not say to your Honor that I seriously question the verdict of the jury, as I think a lawyer must who has sat for five months in a trial as involved as was this trial and found that a jury unanimously reaches a verdict in a period of time of consideration scarcely longer than the time required by your Honor to tell the jury what the law was with respect to the case in [9345] question.

I say that no mind, after a five-months' trial, five months of testimony, hearing for nearly two hours the intricate statement of the law applicable to the facts, as so forcefully and ably presented to the jury by your Honor, could have performed his duty in his conscience when within scarcely more time than it took your Honor to tell them what the law was they could resolve all the intricate questions of law and fact that required five months for presentation.

So that in that posture, if it please your Honor, I say to you as I said to the jury, my client, Morris O. Alprin, is a good man, a man who has served his community well, a man who has earned a reputation stated before the jury, which it totally disregarded, for respect for and adherence to the law, a good reputation for law observance as evidenced by the fact of a letter I hold in my hand from the Treasury Department, Internal Revenue Service directed to Morris O. Alprin as counsel for a client who had a matter before the Internal Revenue Service.

Quoting from the language of Alfred E. Walters, Jr., special agent of the Internal Revenue Service, he says, "I wish to expess to you my thanks for your [9346] cooperation with the Government in this matter."

I have in my hand a letter on the stationery of John W. McCormack who, at the time of this letter was chairman of the Ways and Means Committee of the House of Representatives in the Congress of the United States, addressed to Morris O. Alprin as a result of an appearance he made in behalf of his clients in the most regulated industry in America, and in commenting upon his attitude toward his Government Mr. McCormack says:

"I enjoyed very much your appearance before the Committee. I admired the straightforward manner in which you presented your views without fear or hesitation. I might also say that everything you said was constructive in its nature and made a profound impression both upon myself and upon other members of this committee.

"If there is anything I like to see it is a witness in a fair and constructive manner present his views without fear or hesitation."

I have known this good man for many, many years. In some measure I have been associated with the same industry as has he, and I know that from Maine to Florida and from Seattle, Washington, to [9347] New York City the people in this industry, the lawyers as well as the industrial heads, universally respect and admire the integrity, the cooperativeness, the willingness to make certain that this industry is never in violation of the law as has characterized Morris Alprin during his lifetime.

Now he stands before your Honor, and all this is torn away. He stands before your Honor a man who is a good husband and a good father, a man who has been subjected to the torture of a five-month trial on a criminal indictment

and all the uncertainty which attaches thereto, a trial which has been expensive—and I am not only talking in terms of dollars; I am talking in terms of the effect it has had upon him mentally and physically—a man who is faced now with the likelihood of being denied forevermore the right to exercise the privilege which attaches to the license he holds as a member of the bar of this and other courts in the State of New York, denied perhaps the facility to provide his wife and his family, a man who is faced, in addition to what punishment your Honor may dictate, with a very serious personal tax problem.

Morris Alprin is not a man of financial [9348] means. He is a man who will find it difficult, perhaps impossible, in the light of this decision unless it may be reversed, to meet the financial burden which the Government may attach to him in the Tax Court or elsewhere.

There isn't much I can say to your Honor about Morris Alprin that your Honor doesn't already know because I know countless letters have been written by people who write only because they know Morris Alprin, and the people who know Morris Alprin feel deeply about his patriotism, about his decency, and they are shocked as I am by the verdict of the jury.

I most respectfully say to your Honor that punishment is not purposed to destroy, and I most respectfully say to your Honor that the ends of justice dictate that a suspended sentence be given to Morris Alprin and that he may be permitted to pay such fine as your Honor may see fit to impose.

Thank your Honor for the opportunity of speaking.

The Court: Well, at the outset, before imposing sentence, I should like to make it clear that the governmental

agency and the newspaper involved in [9349] the comments of counsel are not on trial here today, particularly so because I assure the defendants and their counsel and anyone else who requires assurance that the only way that a judge can meet a criticism of that kind is by continuing to function as his conscience dictates, and that I propose to do regardless of the opinion of any administrator or any newspaper.

And while what punishment is meted out may be of little nourishment to the defendants, they may have my assurance that the punishment determined upon was not influenced by the opinion of any administrator or any newspaper, nor was it influenced by the fact that these defendants afforded themselves of their absolute right to have their day in court.

I do not hold with the proposition, if such proposition exists, that additional punishment is to be tacked on to a defendant because he wants a trial when he thinks he is innocent, and that has never entered into any determination of the degree of punishment to be imposed.

I would point out also that in imposing sentence here on these defendants I keep in mind that they are not before this Court on any charge of tax evasion. They are before this Court on a charge [9350] of conspiring to impede, impair, obstruct and defeat the United States Department of the Treasury in the exercise of the lawful function of ascertaining taxes due on income, and that is the only charge on which they are going to be sentenced.

I recognize further that this is, if I may characterize it, a bellwether case. As has been suggested by defense counsel, it is novel, and it is very novel to you such that it

requires that an opportunity be given to the defendants to test whether I erred in refusing to grant a judgment of acquittal as sought by the defendants on the second count of the second indictment, i.e., the fifth count, and so I am determined in the imposition of the jail sentences and the imposition of the fine that I propose to impose that their execution be stayed and that the defendants be admitted to reasonable bail, that they have an opportunity to fully test whether I committed error in ruling as I did on the trial because I do not believe in an instance of this kind, one of first impression, that any man should sit one minute in prison or spend or pay over one cent in fine until he has had an opportunity and the full exercise of [9251] his right to test whether the acts which the Government alleges constituted the crime actually constituted a crime, and I propose to be governed, in imposing sentence, by granting such stays.

I will ask the defendants Klein, Alprin and Haas to rise.

Defendant Klein, I impose a sentence of four years, and I fine him $8000.

On the defendant Alprin I impose a sentence of three years, and I fine him $6000.

On the defendant Haas I impose a sentence of two years, and I fine him $4000.

Execution of each fine is stayed, and the defendants are severally admitted to bail as follows: Klein, $15,000; Alprin, $10,000; Haas, $5000, until, A, the time to appeal has expired with no appeal having been taken by a given defendant or, B, an appeal duly taken by a given defendant has been determined. The Government may move to vacate the stay or to revoke the bail where an appeal has been taken

and is not prosecuted with reasonable dispatch by any defendant.

That is my disposition in this matter.

Mr. Bender: Your Honor, could the bail be continued, that is, the bail that Mr. Haas is under at [9352] the present time, until we have an opportunity to file a new bond?

The Court: The defendants severally will have until four o'clock next Wednesday afternoon to supply bail.

Mr. Bender: And they may continue under their present bail?

The Court: Continue under their present bail. The Court will take a short recess.

Memorandum Decision Denying Motion of Defendant Hyman Harvey Klein to Set Aside the Verdict, Etc.

Sept. 27, 1955

Motion for judgment of acquittal; to set aside the verdict and for a new trial; in arrest of judgment denied.

Motion for stay of execution of sentence and for continuance of bail granted as indicated on the record on September 23, 1955 at sentence.

Motion for enlargement of bail limits granted as indicated in order dated September 27, 1955.

It is so ordered.

SIDNEY SUGARMAN
U.S.D.J.

Memorandum Decision Denying Motion of Defendant Haas to Set Aside Verdict, Etc.

Sept. 27, 1955

Motions to set aside verdict: for judgment of acquittal and in arrest of judgment denied.

SIDNEY SUGARMAN
U.S.D.J.

Memorandum Decision Denying Motion of Defendant Alprin to Set Aside the Verdict, Etc.

September 27, 1955

Motions to set aside verdict for a new trial for judgment of acquittal; and in arrest of judgment denied. It is so ordered.

SIDNEY SUGARMAN
U.S.D.J.

Judgment and Commitment of Hyman Harvey Klein

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA

v.

HYMAN HARVEY KLEIN

On this 23rd day of September, 1955, came the attorney for the government and the defendant appeared in person and[1] by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of[2] not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue; to wit, income taxes.

[1]Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required. [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court wishing to recommend a particular institution.

Judgment and Commitment of Hyman Harvey Klein

T 18 Section 371 (1946 Ed. Supp. V.) USC as charged[3] in count two and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] FOUR (4) YEARS and Fined $8,000.

Execution of prison sentence and payment of fine are stayed and defendant admitted to bail in the amount of $15,000. until

A. his time to appeal has expired with no appeal having been taken; or

B. an appeal duly taken has been determined.

Defendant allowed until 4 PM on 9-28-55 to give bail.

The Government may move to vacate the stay or to revoke bail where an appeal has been taken and is not prosecuted with reasonable dispatch.

[5]Defendant not ordered to stand committed for non-payment of fine.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

SIDNEY SUGARMAN,
United States District Judge.

Judgment and Commitment of Maurice Haas

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA

v.

MAURICE HAAS

On this 23rd day of September, 1955, came the attorney for the government and the defendant appeared in person and[1] by counsel

IT IS ADJUDGED that the defendant has been convicted upon his plea of[2] not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue; to wit, income taxes.

---

[1]Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required. [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court wishing to recommend a particular institution.

Judgment and Commitment of Maurice Haas

T 18 Section 371 (1946 Ed. Supp. V.) USC as charged[3] in count two and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] Two (2) YEARS and Fined $4,000.

Execution of prison sentence and payment of fine are stayed and defendant admitted to bail in the amount of $5,000. until

A. his time to appeal has expired with no appeal having been taken; or

B. an appeal duly taken has been determined.

Defendant allowed until 4 PM on 9-28-55 to give bail.

The Government may move to vacate the stay or to revoke bail where an appeal has been taken and is not prosecuted with reasonable dispatch.

[5]Defendant not ordered to stand committed for non-payment of fine.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant

SIDNEY SUGARMAN
United States District Judge.

Judgment and Commitment of Morris O. Alprin

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA

v.

MORRIS O. ALPRIN

On this 23rd day of September, 1955, came the attorney for the government and the defendant appeared in person and[1] by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of[2] not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue; to wit, income taxes. Title 18, Sec. 371 (1946 Ed. Supp.

---

[1]Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required. [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court wishing to recommend a particular institution.

V), United States Code. as charged[3] in count two and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] THREE (3) YEARS AND Fined $6,000.

Execution of prison sentence and payment of fine are stayed and defendant admitted to bail in the amount of $10,000 until

A.—his time to appeal has expired with no appeal having been taken; or

B.—an appeal duly taken has been determined.

The Government may move to vacate the stay or to revoke bail where an appeal has been taken and is not prosecuted with reasonable dispatch.

Defendant allowed until 4 PM on 9-28-55 to give bail.

Defendant not ordered to stand committed for non-payment of fine.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

SIDNEY SUGARMAN,
United States District Judge.

Notice of Appeal of Appellant Hyman Harvey Klein

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA

vs.

HYMAN HARVEY KLEIN, ISIDOR J. KLEIN, ALBERT MCLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, MAURICE HAAS, IRVING A. KOERNER, MORRIS O. ALPRIN and ALBERT ROER

NAME AND ADDRESS OF APPELLANT:

Hyman Harvey Klein
10521 Bellagio Road
Los Angeles 24, California

NAME AND ADDRESS OF APPELLANT'S ATTORNEYS:

Davis Polk Wardwell Sunderland & Kiendl
15 Broad Street
New York 5, New York

OFFENSE:

Unlawfully, wilfully and knowingly conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Department of the Treasury in the collection of the revenue, to wit, income

taxes (18 U. S. C. Sec. 371), as charged in the Second Count of the indictment.

THE JUDGMENT APPEALED FROM:

The judgment appealed from was signed and entered September 23, 1955 and adjudged that appellant had been convicted upon his plea of not guilty by a verdict of guilty by a jury and that appellant is guilty as charged and convicted; that appellant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years and fined $8,000; and that execution of the prison sentence and payment of the fine be stayed and appellant admitted to bail in the amount of $15,000 until (a) his time to appeal should expire with no appeal having been taken or (b) an appeal should be duly taken and have been determined.

THE ORDERS APPEALED FROM ARE:

(1) An order entered on or about October 1, 1954 which denied a motion of appellant for a bill of particulars of the Second Count of the indictment and for dismissal of that count.

(2) Orders entered September 27, 1955 which denied motions of appellant for (a) judgment of acquittal of the offense charged in the Second Count of the indictment; (b) in the alternative, to set aside the verdict of guilty returned by the jury on the Second Count of the indictment and for a new trial of that count in the interest of justice; and (c) for arrest of judgment.

Notice of Appeal of Appellant Hyman Harvey Klein

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Second Circuit from the above stated judgment and orders.

Dated: New York, New York
September 28, 1955

HYMAN HARVEY KLEIN
Appellant

Notice of Appeal of Appellant Maurice Haas

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA

vs.

MAURICE HAAS,
Appellant.

MAURICE HAAS, 40 Monterey Drive, Mount Vernon, New York—Appellant

LOUIS BENDER, 170 Broadway, New York, New York—Appellant's Attorney

OFFENSE:

Conspiracy to defraud the United States by impairing, impeding, obstructing, and defeating the lawful functions of the Department of the Treasury in the collection of revenue, to wit, income taxes (Title 18, Section 371 U. S. C.)

Conviction after trial by court and jury on August 22, 1955 and sentenced thereon on September 23, 1955 to two years imprisonment and a fine of $4,000.00.

Bail pending final determination of appeal and return of mandate thereon granted by Hon. Sidney Sugarman, Judge, U. S. District Court, September 23, 1955.

Notice of Appeal of Appellant Maurice Haas

By his attorney, Louis Bender, the above named appellant hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the above stated judgment.

Dated: September 23, 1955.

LOUIS BENDER,
Appellant's Attorney,
Office & P. O. Address,
170 Broadway,
Borough of Manhattan,
New York, N. Y.

Notice of Appeal of Appellant Morris O. Alprin

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 145-147

UNITED STATES OF AMERICA

vs.

MORRIS O. ALPRIN,
Appellant.

MORRIS O. ALPRIN, 1350 East 27th Street, Brooklyn, New York—Appellant

F. J. DONOHUE, 503 D Street, N. W., Washington, D. C.—Appellant's Attorney

OFFENSE:

Conspiracy to defraud the United States by impairing, impeding, obstructing, and defeating the lawful functions of the Department of the Treasury in the collection of revenue, to wit, income taxes (Title 18, Section 371 U. S. C.)

Conviction after trial by court and jury on August 22, 1955 and sentenced thereon September 23, 1955 to three years imprisonment and a fine of $6,000.00.

Bail pending final determination of appeal and return of mandate thereon granted by Hon. Sidney Sugarman, Judge, U. S. District Court, September 23, 1955.

Notice of Appeal of Appellant of Morris O. Alprin

By his attorney, F. J. Donohue, the above named appellant hereby appeals to the United States Circuit Court of Appeals for the Second Circuit, from the above stated judgment.

Dated: September 23, 1955.

F. J. DONOHUE,
Appellant's Attorney,
Office & P. O. Address,
503 D Street, N. W.,
Washington, D C

23405

No. 398

Office - Supreme Court, U.S.
FILED
NOV 1 1957

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,
Appellee,

—against—

HYMAN HARVEY KLEIN, MAURICE HAAS, and MORRIS O. ALPRIN,
Defendants-Appellants.

and

ISIDOR J. KLEIN, ALBERT McLENNAN, GEORGE NORGAN, ELLIS ROSENBERG, IRVING A. KOERNER and ALBERT ROER,
Defendants.

APPENDIX TO APPELLANTS' BRIEFS
GOVERNMENT EXHIBIT VOLUME

Volume V
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UNITED STATES COURT OF APPEALS
FILED
NOV 8
1957
SECOND CIRCUIT

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OFFICE OF PRICE ADMINISTRATION
WASHINGTON, D. C.
March 14, 1944

In reply refer to 620

R. C. Williams & Company, Inc.
265 Tenth Avenue
New York, New York

Order No. 34 under Maximum Price Regulation 445
Distilled Spirits and Wines

Gentlemen:

This is in reference to your application dated February 15, 1944 and filed February 18, 1944 under Section 1.8 of Maximum Price Regulation 445, bearing Docket No. N6351-2445-1322-8, wherein you request authority to establish maximum prices for certain distilled spirits to be imported, packaged in fifths, as follows:

REQUESTED MAXIMUM PRICES PER CASE OF FIFTHS

Item	Country of Origin	To Wholesalers	To Retailers	To Monopoly States
Hardwood's Blended Canadian Whiskey	Canada	F.O.B. N.Y. (or nearest point of arrival from Canada) IN BOND	F.O.B. N.Y. City, all present U. S. customs duties and excise taxes, also N. Y. State excise taxes paid	F.O.B. N.Y. (or nearest point of arrival from Canada) IN BOND
		$23.09	$54.18	$23.09

In filing the application you state or represent that you are an im[illegible]r of this item and unable to establish maximum prices therefor under Section 1.4 or 1.5 of MPR 445.

Government Exhibit G 1

The application includes labels for the item which have been approved under regulations of the Federal Alcohol Administration and show your costs of importation. Accordingly, this Office finds the application to be properly filed under Section 1.8 of MPR 445.

The evidence furnished shows that the prices used in the computation of your requested maximum prices do not exceed the foreign supplier's prices for the same item in effect on April 30, 1943 and substantiates the amount attributed to other elements of your direct costs. You have requested a gross margin of $3.00 per case on both your in bond and tax paid sales, but have been unable to substantiate the desired markups by reference to your March 1942 dollar and cents markups on similar sales of comparable items of the same type designation. In the judgment of this Office, the provisions of the Emergency Price Control Act of 1942, as amended, make it necessary, in these circumstances, to establish maximum prices which reflect gross margins over importers' direct costs that are generally fair and equitable. Those margins as found by this Office are $3.00 per case for tax paid sales and $2.50 per case for in bond sales.

After due consideration of the foregoing and pursuant to Sections 1.8(d)(1) and (2) of MPR 445, It is Ordered That:

1. Your maximum price per case for sales of Harwood's Blended Whiskey to wholesalers, f.o.b. New York, New York, shall be as follows:

In Bond Sales	$22.59
Tax Paid Sales (all United States customs duties, United States Excise Taxes and New York State Excise Taxes included)	$47.11

Government Exhibit G 1

2. Your maximum price per case for in bond and tax paid sales of this item to monopoly states, both prices f.o.b. New York, New York, shall be your maximum price per case for the corresponding type of sale of the same item to wholesalers, f.o.b. New York, New York, plus

(a) The amount you allow to the monopoly state as a discount for prompt payment (cash discount) and

(b) The amount per case you pay to purchase and affix seals or stamps of the monopoly state to individual containers in the case being priced.

3. Your maximum price per case for sales of this item to wholesalers and monopoly states either in bond or tax paid, f.o.b. any place other than New York, New York, shall be your maximum price per case for the corresponding type of sale of the same item, f.o.b. New York, New York, less $.92 per case.

4. Your maximum price per case for tax paid sales of this item to retailers f.o.b. New York, New York shall be:

(a) Your maximum price per case for your tax paid sales of the item to wholesalers, plus

(b) 15% of (a).

5. You shall allow as a deduction from your maximum prices for this item the discount for prompt payment (cash discount) which you customarily allowed during March 1942 to customers of the particular class.

6. As used in this order, the term:

(a) "Harwood's Blended Canadian Whiskey" means whiskey imported from Canada, produced and bottled at 90.4° proof, in Canada by Duncan Harwood & Co. Ltd., Vancouver, British Columbia, imported by your company in packages bearing the label

Government Exhibit G-1

therefor submitted with your application and containing 4/5 quart.

(b) A case of the item shall be 12 packages thereof in a single packing container.

(c) "Tax paid sale" means a sale including U. S. customs duties, U. S. excise taxes, and New York State excise taxes.

(d) Unless the context of this order otherwise requires, the definitions in Section 7.12 of MPR 445 shall apply to other terms used herein.

7. This order shall apply only to your sales of the particular item f.o.b. the place, on the terms and to the classes of customers specified. It may be revoked or amended by this Office at any time and shall be deemed revoked with respect to any item without further action by this Office on the effective date of any regulation or amendment establishing maximum prices for importers' sales of that item imported in packages.

8. All prayers of your application bearing the above docket number not granted herein are denied.

9. A copy of this order has been filed as of this date with the Secretary of the Office of Price Administration, Washington, D. C., where it is open to inspection by the public.

This order shall become effective on and after the second day following the date of this letter.

Sincerely,

CHESTER BOWLES
Chester Bowles
Administrator

Government Exhibit G 2-A

MEMORANDUM OF AGREEMENT made this day of April, 1944, by and between AGENCIAS DISTILADORES, S. A. (DISTILLERS AGENCIES, INC.) a corporation duly organized under the laws of the Republic of Cuba, of 411 Aguiar Street, Havana, Cuba, hereinafter called SUPPLIER, and R. C. WILLIAMS & CO., INC., a corporation duly organized under the laws of the State of New York, U. S. A., of 265 Tenth Avenue, New York City, New York, hereinafter called AGENT. Parties

WITNESSETH:

WHEREAS, the SUPPLIER is the exclusive agent of DUNCAN HARWOOD & CO. LTD. of Vancouver, Canada, for the entire world for the sale and distribution of the brand "HARWOOD'S", a blended Canadian Whiskey of 90.4 proof, distilled, blended and bottled by the said DUNCAN HARWOOD & CO., LTD. under the supervision of the Canadian Government; and

WHEREAS, it is the intention of the parties hereto that the SUPPLIER appoint the AGENT as its exclusive sales and distributing agent for the sale of the said brand of "HARWOOD'S" in the United States of America, subject to the terms and conditions of this agreement;

WHEREAS, for the purpose of obtaining the said agency, the AGENT agrees to place an order for 100,000 cases of the said "HARWOOD'S" Whiskey at the price, terms and conditions herein contained.

NOW, THEREFORE, in consideration of these presents, and for other good and valuable considerations, the parties hereto mutually covenant and agree as follows:

Government Exhibit G 2-A

FIRST: The SUPPLIER warrants and represents that it is the exclusive agent of DUNCAN HARWOOD & CO., LTD., Vancouver, British Columbia, Canada, for the sale and distribution of whiskey under the brand name of "HARWOOD'S" for the entire world and has the power and authority to enter into this contract with the AGENT and to appoint the AGENT as exclusive sales and distributing agent for the territory and term hereinafter set forth.

SECOND: The AGENT warrants and represents that:

(a) it has or will obtain the necessary permits and licenses to enable it to carry out the agency herein granted, and further

(b) it has obtained an order from the Office of Price Administration dated March 14, 1944 (Order No. 34) setting forth the maximum prices for sales to wholesalers, monopoly states and retailers for the sale of said "HARWOOD'S" Whiskey, which approved prices warrant the prices set forth in this agreement.

THIRD: The SUPPLIER appoints the AGENT as its exclusive agent to distribute the brand of blended Canadian Whiskey under the label of "HARWOOD'S" for the territory comprising the United States of America, that is, the states in which the distribution and sale of alcoholic beverages is now and/or will in the future be permitted and licensed.

FOURTH: This agreement shall terminate and end with the abolition or discontinuance of the Office of Price Administration in the United States, or when the Office of Price Administration relinquishes and ceases pricing of imported whiskies, whichever is the sooner. The period from the date of this agreement until the happening of

Government Exhibit G 2-A

either of such contingencies shall be the term of this agreement.

FIFTH: The price to be paid by the AGENT to the SUPPLIER for the said "HARWOOD'S" Canadian Whiskey shall be $19.05 per case of 12 bottles of fifths (four-fifths American quarts) at 90.4 proof, f. o. b. Vancouver, British Columbia, Canada, in funds of the United States of America, net, without discount for quantity or payment. It is agreed that the SUPPLIER will give no commissions, allowance or remuneration of any kind to the AGENT, it being the intention and agreement of the parties hereto that the AGENT will make the profits hereinafter set forth as and for such commissions, allowances or remunerations for its efforts and services. **Price**

SIXTH: Strip stamps, necessary and requisite under the laws of the United States, will be furnished by and at the cost of, the AGENT. **Strip Stamps**

SEVENTH: It is understood and agreed that title to all shipments from the SUPPLIER to the AGENT shall pass f. o. b. Vancouver, Canada, and the AGENT assumes all risk of loss after the merchandise is loaded on railroad cars at Vancouver, B. C., and a railroad bill of lading is issued for such shipment. **Passing of Title**

EIGHTH: All importations into the United States shall be in the name of the AGENT which shall make all customs entries therefor. The SUPPLIER, at its cost and expense, shall attach a strip or add to the label, words as follows: **Importations in name of AGENT**

"Imported by R. C. WILLIAMS & Co., INC.
265 Tenth Avenue,
New York, N. Y.
Sole Agent for the U. S."

Government Exhibit G 2-A

Where State Laws make it necessary to affix a strip or label showing the name of the licensee in the said state, same shall be affixed by the SUPPLIER at the SUPPLIER's cost and expense, on the written instructions of the AGENT, such strip or label to contain the name of the wholesale customer of the AGENT in such state. Whenever whiskey is already cased, in such event the customer of the AGENT, pursuant to the laws of the State in which the customer is located, shall affix his own strip or label, at his own cost and expense.

NINTH: The AGENT shall post schedules of prices or other schedules, labels or listings wherever necessary and required and shall conform to all rules, regulations and orders of the various federal, state and other bodies having jurisdiction over the activities of the AGENT in carrying out the terms of this agreement and, further, that this agreement shall be subject to all such rules, regulations and orders.

TENTH: It is understood and agreed that the AGENT is to purchase and receive a minimum of 12½% of all the "HARWOOD'S" brand as aforesaid shipped into the United States, such minimum of 12½% to be sold and distributed by the AGENT to its retail customers in Metropolitan New York City. An additional quantity of a minimum of 12½% is to be sold and distributed to wholesalers in the State of New York (other than the AGENT) and the balance of 75% is to be sold and distributed to wholesalers and monopoly states in the remainder of the territory hereinbefore set forth (the State of New York excepted).

ELEVENTH: Notwithstanding the maximum prices set forth in the order of the Office of Price Administration hereinbefore set forth, the AGENT agrees that it will make sales of "HARWOOD'S" to wholesalers on the following basis:

Government Exhibit G 2-A

$20.77, net, per case, f.o.b. Vancouver, Canada, in bond, which price is made up of the total of

(a) cost of $19.05

(b) strip stamps of 12¢, and

(c) profit of $1.60

and that all sales to wholesalers will be at a price not to exceed the said price of $20.77 per case; the wholesaler (when goods are already cased) to affix State Stamps where required, at his own cost and expense.

Sales to monopoly states shall be made on the same basis, except for an increase to cover cash discount and the cost of affixing state seals where necessary and required.

TWELFTH: Notwithstanding the maximum prices set forth in the order of the Office of Price Administration hereinbefore set forth, the AGENT agrees that it will make sales of "HARWOOD'S" to retailers in Metropolitan New York City territory on the basis of the price to wholesalers set forth in paragraph "Eleventh" hereof, plus railroad freight from Vancouver, Canada, to New York City, customs duties and Federal Internal Revenue Taxes (except the increase in such taxes effective April 1, 1944 which shall be billed as a separate item and on which no profit or markup shall be taken), and New York State Excise Taxes, plus the wholesale profit of 15% on the total of the foregoing; and that all sales by the AGENT to retailers in Metropolitan New York City territory will not exceed the price based on the foregoing formula. On all such retail sales, the AGENT will pay all commissions and selling expenses for its own account and at its cost and expense, it being understood and agreed that the importer's profit of $1.60

Prices to Retailers in New York City Territory

Government Exhibit G 2-A

per case, plus the wholesaler's profit or markup of 15% will be the total profit or remuneration to be received by it

THIRTEENTH: The AGENT agrees to open a revolving irrevocable letter of credit for $200,000 in favor of the SUPPLIER in the Chase National Bank of New York, main office, or such other bank mutually agreed upon by the parties hereto. On all shipments made by the SUPPLIER, or its principal DUNCAN HARWOOD & Co., LTD. of Vancouver, Canada, payment shall be made by the AGENT through the medium of the said letter of credit against the following documents:

Commercial Invoice, Consular Invoice,
Railroad Bill of Lading, and 3 days Sight Draft.

As each shipment is made and the draft paid, the letter of credit shall thereupon be brought up to $200,000 by the AGENT. It is understood that the AGENT shall require sight letters of credit, irrevocable for 90 days and Payable against documents from its wholesale customers. In the event that any shipment is in excess of the sum of $200,000, then and in such event payment of the excess shall be by three (3) days sight draft, to which draft are attached the documents hereinbefore specified in this paragraph.

FOURTEENTH: The AGENT herewith places an order for 100,000 cases of the said "HARWOOD'S" blended Canadian Whiskey, 90.4 proof, 12 bottles of fifths (four-fifths American quarts) to the case, first part shipment to be shipped on or before June 15, 1944 and agrees to the opening of the revolving letter of credit for $200,000 as set forth in the preceding paragraph on or before May 8th, 1944. Shipments on account of this order shall be made

Government Exhibit G 2-A

by the SUPPLIER or its principal DUNCAN HARWOOD & CO. LTD. from time to time, subject to the ability of the SUPPLIER and its principal to make such shipments, provided however, that this order of 100,000 cases shall be completed within one (1) year from the date hereof.

FIFTEENTH: The SUPPLIER represents and warrants that its President, H. H. KLEIN, residing at 3610 Clarinth Road, Baltimore, Maryland, is authorized and empowered to act for it and in its behalf. All notices shall be sent to the SUPPLIER addressed to it at the address hereinbefore set forth and a copy to be sent to H. H. KLEIN at 3610 Clarinth Road, Baltimore, Maryland, and all notices to the AGENT shall be sent to it at its address hereinbefore set forth—265 Tenth Avenue, New York City, N. Y.

Notices

SIXTEENTH: All orders given pursuant to the terms of this agreement, are accepted subject to the ability of the SUPPLIER and the ability of its principal DUNCAN HARWOOD & Co., LTD. to perform and should the SUPPLIER or its principal be unable to complete the same by act of God, or the elements, public authority, public enemy, embargoes, obstruction to navigation, strikes, insurrection, fire, floods, unusual delay of common carriers, unavoidable casualties, inability to procure materials or supplies, order of requisition, request, regulation or order of any Governmental authority or other causes beyond the control of the SUPPLIER or its principal, whether or not the cause be of the same class or kind as those enumerated above, which may directly or indirectly cause the SUPPLIER or its principal to be unable to deliver or ship or prevent the SUPPLIER's principal from manufacturing, blending or bottling the merchandise covered herein; thence any order or any part thereof remaining undelivered shall be cancelled without

Subject Clause Acts of God, etc.

Government Exhibit G 2-A

penalties or damage, and the AGENT shall be entitled to the return of any deposits or the release of any letters of credit if such have been established, and all or such undelivered portion of any order shall be null and void as though never having existed. In the event the AGENT is prevented from performing the terms and conditions of the agreement by it to be performed due to any disability imposed by laws, rules or regulations of the United States, State, or City Governments, or any departments or agencies thereof, then to the extent of such disability or disabilities performance on the AGENT's part as provided for herein shall be excused and AGENT shall not be liable for such non-performance.

SEVENTEENTH: In the event of a dispute between the parties hereto regarding any of the terms of this agreement, each of the said parties shall appoint one arbitrator, and the two arbitrators so named to nominate and appoint a third arbitrator, and the three arbitrators so named shall determine the controversy presented to them pursuant to the Arbitration Laws of the State of New York, in such cases made and provided.

EIGHTEENTH: This agreement constitutes the entire understanding between the parties hereto, and no amendments or changes thereof shall be valid and binding unless the same is in writing, signed by both of the parties hereto.

Government Exhibit G 2-A

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year hereinafter set forth.

AGENCIAS DISTILADORES, S. A.
(DISTILLERS AGENCIES, INC.)

By:

.....(L. S.)
President

R. C. WILLIAMS & CO., INC.

By:

.....(L. S.)
Vice-President.

Government Exhibit G 2-B

MEMORANDUM OF AGREEMENT made this day of April, 1944, by and between AGENCIAS DISTILADORES, S. A. (Distillers Agencies, Inc.) a corporation duly organized under the laws of the Republic of Cuba, of 411 Aguiar Street, Havana, Cuba, hereinafter called SUPPLIER, and R. C. WILLIAMS & Co., INC., a corporation duly organized under the laws of the State of New York, U. S. A., of 265 Tenth Avenue, New York City, New York, hereinafter called AGENT.

WITNESSETH:

WHEREAS, the SUPPLIER is the exclusive agent of DUNCAN HARWOOD & Co., LTD. of Vancouver, Canada, for the entire world for the sale and distribution of the brand "HARWOOD'S", a blended Canadian Whiskey of 90.4 proof, distilled, blended and bottled by the said DUNCAN HARWOOD & Co., LTD. under the supervision of the Canadian Government, and

WHEREAS, it is the intention of the parties hereto that the SUPPLIER appoint the AGENT as its exclusive sales and distributing agent for the sale of the said brand of "HARWOOD'S" in the United States of America, subject to the terms and conditions of this agreement, and

WHEREAS, for the purpose of obtaining the said agency, the AGENT agrees to place an order for 100,000 cases of the said "HARWOOD'S" Whiskey at the price, terms and conditions herein contained.

NOW, THEREFORE, in consideration of these presents, and for other good and valuable considerations, the parties hereto mutually covenant and agree as follows:

Government Exhibit G 2-B

FIRST: The SUPPLIER warrants and represents that it is the exclusive agent of DUNCAN HARWOOD & Co., LTD., Vancouver, British Columbia, Canada, for the sale and distribution of whiskey under the brand, "HARWOOD'S" for the entire world, and has the power and authority to enter into this contract with the AGENT and to appoint the AGENT as exclusive sales and distributing agent for the territory and term hereinafter set forth.

Authority of SUPPLIER to appoint AGENT

SECOND: The AGENT warrants and represents that:

(a) it has or will obtain the necessary permits and licenses to enable it to carry out the agency herein granted, and further

(b) it has obtained an order from the Office of Price Administration dated March 14, 1944 (Order No. 34) setting forth the maximum prices for sales to wholesalers, monopoly states and retailers for the sale of said "HARWOOD'S" Whiskey, which approved prices warrant the prices set forth in this agreement.

Authority of O. P. A. Prices

THIRD: The SUPPLIER appoints the AGENT as its exclusive agent to distribute the brand of blended Canadian Whiskey under the label of "Harwood's", for the territory comprising the United States of America, that is, those states in which the distribution and sale of alcoholic beverages is now and will indefinitely be permitted and licensed.

Exclusive Agency and Territory

FOURTH: This agreement shall terminate and end with the abolition or the discontinuance of the Office of Price Administration in the United States, or when the Office of Price Administration relinquishes and ceases pricing of

Term

Government Exhibit G 2-B

imported whiskies, whichever is the sooner. The period from the date of this agreement until the happening of either of such contingencies shall be the term of this agreement.

FIFTH: The price to be paid by the AGENT to the SUPPLIER for the said "HARWOOD'S" Canadian Whiskey shall be $19.05 per case of 12 bottles of fifths (four-fifths American quarts) at 90.4 proof, f.o.b. Vancouver, British Columbia, Canada, in funds of the United States of America, net, without discount for quantity or payment. It is agreed that the SUPPLIER will give no commissions, allowance or remuneration of any kind to the AGENT, it being the intention and agreement of the parties hereto that the AGENT will make the profits hereinafter set forth as and for such commissions, allowances or remunerations for its efforts and services.

SIXTH: Strip stamps, necessary and requisite under the laws of the United States, will be furnished by, and at the cost of, the AGENT.

SEVENTH: It is understood and agreed that title to all shipments from the SUPPLIER to the AGENT shall pass f.o.b. Vancouver, Canada, and the AGENT assumes all risk of loss after the merchandise is loaded on railroad cars at Vancouver, B. C., and a railroad bill of lading is issued for such shipment.

EIGHTH: All importations into the United States shall be in the name of the AGENT which shall make all customs entries therefor. Where state laws make it necessary to affix a strip or label showing the name of the licensee in the said state, same shall be affixed by the SUPPLIER at the SUPPLIER'S cost and expense, on the written instructions

Government Exhibit G 2-B

of the AGENT, such strip or label to contain the name of the wholesale customer of the AGENT in such state.

NINTH: The AGENT shall post schedules of prices or other schedules, labels or listings wherever necessary and required and shall conform to all rules, regulations and orders of the various federal, state and other bodies having jurisdiction over the activities of the AGENT in carrying out the terms of this agreement and, further, that this agreement shall be subject to all such rules, regulations and orders.

Posting of Schedules, etc.

TENTH: It is understood and agreed that the AGENT is to purchase and receive a minimum of 12½% of all the "HARWOOD'S" brand as aforesaid shipped into the United States, such minimum of 12½% to be sold and distributed by the AGENT to its retail customers in Metropolitan New York City. An additional quantity of a minimum of 12½% is to be sold and distributed to wholesalers in the State of New York (other than the AGENT) and the balance of 75% is to be sold and distributed to wholesalers and monopoly states in the remainder of the territory hereinbefore set forth (the State of New York excepted).

Minimum quantity for retail distribution by AGENT.

ELEVENTH: Notwithstanding the maximum prices set forth in the order of the Office of Price Administration hereinbefore set forth, the AGENT agrees that it will make sales of "HARWOOD'S" to wholesalers on the following basis:

$20.77, net, per case, f.o.b. Vancouver, Canada, in bond, which price is made up of the total of

(a) cost of $19.05

(b) strip stamps of 12¢, and

(c) profit of $1.60

Price of AGENT to wholesalers and monopoly states.

Government Exhibit G 2-B

and that all sales to wholesalers will be at a price not to exceed the said price of $20.77 per case.

Sales to monopoly states shall be made on the same basis, except for an adjustment for cash discount and the cost of affixing state seals where necessary and required.

TWELFTH: Out of the profit of $1.00 per case, as set forth in the preceding paragraph, the AGENT agrees that it will pay a brokerage or selling commission of 60¢ per case to brokers or selling agents employed by it, with the understanding and agreement however, that no such broker or selling agent will be employed by the AGENT unless and until the written approval of the SUPPLIER is first obtained as to each such broker or selling agent.

Compensation and approval of brokers or selling agents.

THIRTEENTH: The AGENT shall make no sales to wholesalers or monopoly states without first having received the written approval of the SUPPLIER, it being the understanding and agreement of the parties hereto that the SUPPLIER shall have the refusal of the customer or the quantity sold by the AGENT to any wholesaler or monopoly state.

Approval of SUPPLIER to all sales to wholesalers or monopoly states

FOURTEENTH: After the SUPPLIER or its principal shall have shipped 12,500 cases to the AGENT for retail sales by the AGENT, or after the AGENT has accepted and paid for its own account for sales to retailers for 12½% of the total of all shipments by the SUPPLIER or its principal, then and in such event the AGENT shall not be required to accept any further shipments, or to maintain the letter of credit hereinafter provided, unless and until sales to other wholesalers and monopoly states are approved by the SUPPLIER, a[illegible]

Requirement of approval by SUPPLIER

Government Exhibit G 2-B

corresponding letters of credit are opened by such wholesale customers in favor of the AGENT.

FIFTEENTH: Notwithstanding the maximum prices set forth in the order of the Office of Price Administration hereinbefore set forth, the AGENT agrees that it will make sales of "HARWOOD'S" to retailers in Metropolitan New York City territory on the basis of the price to wholesalers set forth in paragraph "Eleventh" hereof, plus railroad freight from Vancouver to New York City, customs duties and Federal Internal Revenue Taxes (except the increase in such taxes effective April 1, 1944, which shall be billed as a separate item, and on which no profit or markup shall be taken), and New York State Excise Taxes, plus the wholesale profit of 15% on the total of the foregoing; and that all sales by the AGENT to retailers in Metropolitan New York City territory will not exceed the price based on the foregoing formula. On all such retail sales, the AGENT will pay all commissions and selling expenses for its own account and at its cost and expense, it being understood and agreed that the importer's profit of $1.60 per case, plus the wholesaler's profit or markup of 15% will be the total profit or remuneration to be received by it.

Prices to retailers in New York City territory

SIXTEENTH: The AGENT agrees to open a revolving irrevocable letter of credit for $200,000 in favor of the SUPPLIER in the Chase National Bank of New York, main office or such other bank mutually agreed upon by the parties hereto. On all shipments made by the SUPPLIER, or its principal DUNCAN HARWOOD & CO., LTD. of Vancouver, Canada, payment shall be made by the AGENT through the medium of the said letter of credit against the following documents: Commercial Invoice, Consular Invoice, Railroad Bill of Lading and Sight Draft. As each shipment is

Terms of payment

made and the draft paid, the letter of credit shall thereupon be brought up to $200,000 by the AGENT. It is understood that the AGENT shall require similar letters of credit from its wholesale customers.

SEVENTEENTH: The AGENT herewith places an order for 100,000 cases of the said "HARWOOD'S" blended Canadian Whiskey, 90.4 proof, 12 bottles of fifths (four-fifths American quarts) to the case, first part shipment to be shipped on or before June 15, 1944 and agrees to the opening of the revolving letter of credit for $200,000 as set forth in the preceding paragraph on or before May 8th, 1944. Shipments on account of this order shall be made by the SUPPLIER or its principal DUNCAN HARWOOD & Co., LTD. from time to time, subject to the ability of the SUPPLIER and its principal to make such shipments, provided however, that this order of 100,000 cases shall be completed within one year from the date hereof.

EIGHTEENTH: The SUPPLIER represents and warrants that its President, H. H. KLEIN, residing at 3610 Clarinth Road, Baltimore, Maryland, is authorized and empowered to act for it and in its behalf. All notices shall be sent to the SUPPLIER addressed to it in care of the said H. H. KLEIN at 3610 Clarinth Road, Baltimore, Maryland, and all notices to the AGENT shall be sent to it at its address hereinbefore set forth—265 Tenth Avenue, New York City, N. Y.

NINETEENTH: This order and all orders given pursuant to the terms of this agreement, is accepted subject to the ability of the SUPPLIER and the ability of its principal DUNCAN HARWOOD & Co., LTD. to perform, and should the SUPPLIER or its principal be unable to complete the same

Government Exhibit G 2-B

by act of God, or the elements, public authority, public enemy, embargoes, obstruction to navigation, strikes, insurrection, fire, floods, unusual delay of common carriers, unavoidable casualties, inability to procure materials or supplies, order of requisition, request, regulation or order of any Governmental authority or other causes beyond the control of the SUPPLIER or its principal, whether or not the cause be of the same class or kind as those enumerated above, which may directly or indirectly cause the SUPPLIER or its principal to be unable to deliver or ship, or prevent the SUPPLIER's principal from manufacturing, blending or bottling the merchandise covered herein; thence this order or any part remaining undelivered shall be cancelled without penalties or damage, and the AGENT shall be entitled to the return of any deposits or the release of any letters of credit if such have been established, and all or such undelivered portion of this order shall be null and void as though never having existed.

Subject Clause Acts of God, etc.

TWENTIETH: This agreement constitutes the entire understanding between the parties hereto, and no amendments or changes thereof shall be valid and binding unless the same is in writing, signed by both of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

AGENCIAS DISTILADORES, S. A.
(DISTILLERS AGENCIES, INC.)
By:

.....(L. S.)

R. C. WILLIAMS & Co., INC.
By:

.....(L. S.)

Government Exhibit G 3

MORRIS O. ALPRIN
COUNSELLOR-AT-LAW
GRAYBAR BUILDING
420 LEXINGTON AVENUE
NEW YORK

LEXINGTON 2-3916
3917

April 4, 1944.

Jules Jacobs, Esq.
11 West 42nd St.
New York, N. Y.

Re: Agency Contract
Distillers Agencies, Inc.
With
R. C. Williams & Co. Inc.

Dear Mr. Jacobs:

I am enclosing herewith draft of proposed Agreement in the above entitled matter following our conference with the principals at the office of R. C. Williams & Co. Inc. yesterday.

I am also forwarding a copy to Mr. Klein for his comments or suggestions and would appreciate your advices with respect to any of the provisions in the proposed agreement.

Mr. H. H. Klein is expected back in New York on Thursday of this week and if it is possible for us to agree upon the proposed agreement, or any suggestions you may

Government Exhibit G 3

have, it may be possible to have the agreement concluded and executed while Mr. Klein is in New York.

Naturally, the parties are anxious to conclude the matter as quickly as possible and I would appreciate your earliest possible advices in the matter.

Sincerely,

MORRIS O. ALPRIN

MOA:MF
Enc. 1.

Government Exhibit G 4

MEMORANDUM OF AGREEMENT made this 18th day of April, 1944, by and between AGENCIAS DISTILADORES, S. A. (DISTILLERS AGENCIES, INC.) a corporation duly organized under the laws of the Republic of Cuba, of 411 Aguiar Street, Havana, Cuba, hereinafter called "SUPPLIER", and R. C. WILLIAMS & COMPANY, INC., a corporation duly organized under the laws of the State of New York, U. S. A., of 265 Tenth Avenue, New York City, New York, hereinafter called "AGENT".

WITNESSETH:

WHEREAS, the SUPPLIER is the exclusive agent of DUNCAN HARWOOD & Co. LTD. of Vancouver, Canada, for the entire world for the sale and distribution of the brand "HARWOOD'S", a blended Canadian whiskey of 90.4 proof, distilled, blended and bottled by the said DUNCAN HARWOOD & Co., LTD. under the supervision of the Canadian Government; and

WHEREAS, it is the intention of the parties hereto that the SUPPLIER appoint the AGENT as its exclusive sales and distributing agent for the sale of the said brand of "HARWOOD'S" in the United States of America, subject to the terms and conditions of this agreement;

NOW, THEREFORE, in consideration of these presents, and for other good and valuable considerations, the parties hereto mutually covenant and agree as follows:

Government Exhibit G 4

FIRST: The SUPPLIER warrants and represents that it is the exclusive agent of DUNCAN HARWOOD & Co., LTD., Vancouver, British Columbia, Canada, for the sale and distribution of whiskey under the brand name of "HARWOOD'S" for the entire world and has the power and authority to enter into this contract with the AGENT and to appoint the AGENT as exclusive sales and distributing agent for the territory and term hereinafter set forth.

Authority of Supplier to appoint Agent.

SECOND: The AGENT warrants and represents that:

(a) it has or will obtain the necessary permits and licenses to enable it to carry out the agency herein granted, and further

(b) it has obtained an order from the Office of Price Administration dated March 14, 1944 (Order No. 34) setting forth the maximum prices for sales to wholesalers, monopoly states and retailers for the sale of said "HARWOOD'S" Whiskey, which approved prices warrant the prices set forth in this agreement.

Authority of O. P. A. Prices.

THIRD: The SUPPLIER appoints the AGENT as its exclusive agent to distribute the brand of blended Canadian Whiskey under the label of "HARWOOD'S" for the territory comprising the United States of America, that is, the states in which the distribution and sale of alcoholic beverages is now and/or will in the future be permitted and licensed.

Exclusive Agency and Territory.

FOURTH: This agreement shall terminate and end with the abolition or discontinuance of the Office of Price Administration in the United States, or when the Office of Price Administration relinquishes and ceases pricing of imported whiskies, whichever is the sooner. The period

Term.

Government Exhibit G 4

from the date of this agreement until the happening of either of such contingencies shall be the term of this agreement.

FIFTH: The price to be paid by the AGENT to the SUPPLIER for the said "HARWOOD'S" Canadian Whiskey shall be $19.05 per case of 12 bottles of fifths (four-fifths American quarts) at 90.4 proof, f. o. b. Vancouver, British Columbia, Canada, in funds of the United States of America, net, without discount for quantity or payment. It is agreed that the SUPPLIER will give no commissions, allowance or remuneration of any kind to the AGENT, it being the intention and agreement of the parties hereto that the AGENT will make the profits hereinafter set forth as and for such commissions, allowances or remunerations for its efforts and services.

SIXTH: Strip stamps, necessary and requisite under the laws of the United States, will be furnished by and at the cost of the AGENT.

SEVENTH: It is understood and agreed that title to all shipments from the SUPPLIER to the AGENT shall pass f. o. b. Vancouver, Canada, and the AGENT assumes all risk of loss after the merchandise is loaded on railroad cars at Vancouver, B.C., and a railroad bill of lading is issued for such shipment.

EIGHTH: All importations into the United States shall be in the name of the AGENT which shall make all customs entries therefor. The SUPPLIER, at its cost and expense, shall attach a strip or add to the label words as follows:

Government Exhibit G 4

"Imported by R. C. WILLIAMS & Co. Inc.
265 Tenth Avenue
New York, N. Y.
Sole Agent for the U. S."

Importations in name of Agent.

Where State Laws make it necessary to affix a strip or label showing the name of the licensee in the said state, same shall be affixed by the SUPPLIER at the SUPPLIER'S cost and expense, on the written instructions of the AGENT, such strip or label to contain the name of the wholesale customer of the AGENT in such state. Whenever whiskey is already cased, in such event the customer of the AGENT, pursuant to the laws of the State in which the customer is located, shall affix his own strip or label at his own cost and expense.

NINTH: The AGENT shall post schedules of prices or other schedules, labels or listings wherever necessary and required and shall conform to all rules, regulations and orders of the various federal, state and other bodies having jurisdiction over the activities of the AGENT in carrying out the terms of this agreement and, further, that this agreement shall be subject to all such rules, regulations and orders.

Posting of Schedules, etc.

TENTH: It is understood and agreed that the AGENT is to purchase and receive a minimum of 12½% of all the "HARWOOD'S" brand as aforesaid shipped into the United States, such minimum of 12½% to be sold and distributed by the AGENT to its retail customers in Metropolitan New York City. An additional quantity of a minimum of 12½% is to be sold and distributed to wholesalers in the State of New York (other than the AGENT) and the balance of

Government Exhibit G 4

um Quan- r Retail ution by

75% is to be sold and distributed to wholesalers and monopoly states in the remainder of the territory hereinbefore set forth (the State of New York excepted).

ELEVENTH: Notwithstanding the maximum prices set forth in the order of the Office of Price Administration hereinbefore set forth, the AGENT agrees that it will make sales of "HARWOOD'S" to wholesalers on the following basis:

$20.77, net, per case, f.o.b. Vancouver, Canada, in bond, which price is made up of the total of

(a) cost of $19.05

(b) strip stamps of 12¢, and

(c) profit of $1.60

and that all sales to wholesalers will be at a price not to exceed the said price of $20.77 per case; the wholesaler (when goods are already cased) to affix State Stamps where required, at his own cost and expense.
Sales to monopoly states shall be made on the same basis, except for an increase to cover cash discount and the cost of affixing state seals where necessary and required.

TWELFTH: Notwithstanding the maximum prices set forth in the order of the Office of Price Administration hereinbefore set forth, the AGENT agrees that it will make sales of "HARWOOD'S" to retailers in Metropolitan New York City territory on the basis of the price to wholesalers

set forth in paragraph "Eleventh" hereof, plus railroad freight from Vancouver, Canada, to New York City, customs duties and Federal Internal Revenue Taxes (except the increase in such taxes effective April 1, 1944 which shall be billed as a separate item and on which no profit or markup shall be taken), and New York State Excise Taxes, plus the wholesale profit of 15% on the total of the foregoing; and that all sales by the AGENT to retailers in Metropolitan New York City territory will not exceed the price based on the foregoing formula. On all such retail sales, the AGENT will pay all commissions and selling expenses for its own account and at its cost and expense, it being understood and agreed that the importer's profit of $1.60 per case, plus the wholesaler's profit or markup of 15% will be the total profit or remuneration to be received by it.

Prices in New Territo

THIRTEENTH: The AGENT agrees to open a revolving irrevocable letter of credit for $200,000.00 in favor of the SUPPLIER in the Chase National Bank of New York, main office, or such other bank mutually agreed upon by the parties hereto. On all shipments made by the SUPPLIER, or its principal DUNCAN HARWOOD & CO., LTD. of Vancouver, Canada, payment shall be made by the AGENT through the medium of the said letter of credit against the following documents:

Terms Payme

Commercial Invoice, Consular Invoice,
Railroad Bill of Lading, and 3 days Sight Draft.

As each shipment is made and the draft paid, the letter of credit shall thereupon be brought up to $200,000.00 by the AGENT. It is understood that the AGENT shall require sight

letters of credit, irrevocable for 90 days and payable against documents from its wholesale customers. In the event that any shipment is in excess of the sum of $200,000.00, then and in such event payment of the excess shall be by three (3) days sight draft, to which draft are attached the documents hereinbefore specified in this paragraph.

FOURTEENTH: All notices shall be sent to the SUPPLIER addressed to it at the address hereinbefore set forth and a copy to be sent to H. H. KLEIN at 3610 Clarinth Road, Baltimore, Maryland, and all notices to the AGENT shall be sent to it at its address hereinbefore set forth—265 Tenth Avenue, New York City, N. Y.

FIFTEENTH: All orders given pursuant to the terms of this agreement are accepted subject to the ability of the SUPPLIER and the ability of its principal DUNCAN HARWOOD & Co., LTD. to perform and should the SUPPLIER or its principal be unable to complete the same by act of God, or the elements, public authority, public enemy, embargoes, obstruction to navigation, strikes, insurrection, fire, floods, unusual delay of common carriers, unavoidable casualties, inability to procure materials or supplies, order of requisition, request, regulation or order of any Government authority or other causes beyond the control of the SUPPLIER or its principal, whether or not the cause be of the same class or kind as those enumerated above, which may directly or indirectly cause the SUPPLIER or its principal to be unable to deliver or ship or prevent the SUPPLIER's principal from manufacturing, blending or bottling the merchandise

covered herein, thence any order or any part thereof remaining undelivered shall be cancelled without penalties or damage, and the AGENT shall be entitled to the return of any deposits or the release of any letters of credit if such have been established, and all or such undelivered portion of any order shall be null and void as though never having existed. In the event the AGENT is prevented from performing the terms and conditions of the agreement by it to be performed due to any disability imposed by laws, rules or regulations of the United States, State, or City Governments, or any departments or agencies thereof, then to the extent of such disability or disabilities performance on the AGENT's part as provided for herein shall be excused and AGENT shall not be liable for such non-performance.

SIXTEENTH: In the event of a dispute between the parties hereto regarding any of the terms of this agreement, each of the said parties shall appoint one arbitrator, and the two arbitrators so named to nominate and appoint a third arbitrator, and the three arbitrators so named shall determine the controversy presented to them pursuant to the Arbitration Laws of the State of New York, in such cases made and provided. Arbitra

SEVENTEENTH: This agreement constitutes the entire understanding between the parties hereto, and no amendments or changes thereof shall be valid and binding unless the same is in writing, signed by both of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year hereinafter set forth.

Signed in New York City
this 18 day of April, 1944

R. C. WILLIAMS & COMPANY, INC.

By: W. E. MENGEBIER
Vice Pres.

Signed in Havana, Cuba
this 8th day of May, 1944.

AGENCIAS DISTILADORES, S. A.
(DISTILLERS AGENCIES, INC.)

By: F. GURRI

11058-B
Exhibit 17

V

R. C. WILLIAMS & CO., INC.

Since 1811

IMPORTERS · EXPORTERS · MANUFACTURERS · COFFEE ROASTERS

TENTH AVENUE · 25TH to 26TH STREET · NEW YORK, N.Y.

TELEPHONE CHICKERING 4-1100

CABLE ADDRESS RECRECER

Government Exhibit G 5

33a

April 20, 1944

Agencias Distiladores, S.A.
411 Aguiar Street
Havana, Cuba

Gentlemen;

Supplementing the agreement between us made the 18th day of April, 1944 and it being the desire of the parties that the merchandise be marketed through the proper channels and in the proper manner in order to establish the business on a sound financial basis, it is further agreed as follows;

1. Out of the profit of $1.60 per case as provided for in the agreement, the Agent agrees that it will pay a brokerage or selling commissionof not in excess of 60¢ per case to brokers or selling agents selected by it but no such broker or selling agent will be selected by the Agent unless and until the written approval of the Supplier is first obtained as to each such broker or selling agent.

2. The Agent will make no sales to wholesalers in monopoly states without first having received written approval of the Supplier. The Supplier shall have the refusal of the customer or the quantity sold by the Agent to any wholesaler or monopoly state.

3. After the Agent has accepted and paid for its own account for sales to retailers for 12,500 cases or 12½% of the total of all shipments by the Supplier or its Principal, whichever is greater, then and in such event the Agent shall not be required to accept any further shipments. On all sales in excess of the above 12,500 cases or 12½%, whichever is greater, Agent shall not be compelled to pay for same unless and until the Agent shall have received from its customer a sight letter of credit irrevocable for 90 days in favor of the Agent. The Supplier or its Principal is to make shipment of any goods so sold to Agent's wholesale customers on open

TELEPHONE
CHICKERING 4-1100

R. C. WILLIAMS & CO., INC.

Since 1811

IMPORTERS · EXPORTERS · MANUFACTURERS · COFFEE ROASTERS
TENTH AVENUE · 25TH TO 26TH STREET · NEW YORK, N.Y.

CABLE ADDRESS
RECRECER

credit to Agent by forwarding the documents provided for in the agreement and with three (3) days sight draft to the bank and payment thereof is to be made by the Agent to the bank in accordance with such sight draft.

4. The revolving letter of credit referred to in paragraph Thirteenth of the agreement is to be established by the Agent on or about May 8, 1944 upon receipt of acceptance of order for 100,000 cases.

5. All payments for merchandise are to be made in New York City.

Will you please sign the duplicate original of this letter where indicated and return to us.

Very truly yours,

R. C. WILLIAMS & COMPANY, INC.

BY: W. E. Klingelhuer Vice Pres.

Government Exhibit G 5

34a

R. C. WILLIAMS & CO., INC.

Since 1811

IMPORTERS · EXPORTERS · MANUFACTURERS · COFFEE ROASTERS

TENTH AVENUE · 25TH TO 26TH STREET · NEW YORK, N.Y.

TELEPHONE CHICKERING 4-1100

CABLE ADDRESS RECRECER

Government Exhibit G 6

35a

April 20, 1944

Agencias Distiladores, S. A.
411 Aguiar Street
Havana, Cuba

Gentlemen:

Enclosed please find the following documents:

1. Memorandum of agreement signed by us on the 18th day of April, 1944.

2. Supplemental agreement dated April 20, 1944.

3. Letter dated April 18, 1944 with respect to order for 100,000 cases.

Will you immediately upon approval and execution by you of the agreement and the letter supplementing the agreement and the acceptance of our order cable us to that effect so that we may establish the letter of credit.

Will you please return to us airmail insured a set of the documents forwarded to you properly signed and executed.

Very truly yours,

R. C. WILLIAMS & COMPANY, INC.

BY: R. C. Williams Vice Pres.

Agencias Destiladoras

R. C. WILLIAMS ~~& CO., INC.~~

Since 1811 / Contractor RCW

IMPORTERS · EXPORTERS · MANUFACTURERS · COFFEE ROASTERS

TENTH AVENUE · 25TH TO 26TH STREET · NEW YORK, N.Y.

TELEPHONE CHICKERING 4-1100

CABLE ADDRESS RECRECER

145-a-4

Government Exhibit G 7

36a

April 18, 1944

Agencias Distiladores, S. A.
411 Aguiar Street
Havana, Cuba

Gentlemen:

In connection with the proposed agreement between us, signed copies of which are being forwarded to you, and pursuant thereto, please accept our order for 100,000 cases of HARWOOD'S Canadian Whiskey conditioned upon your acceptance of the aforesaid agreement and any supplemental agreements and your returning to us the aforesaid properly signed and executed.

Very truly yours,

R. C. WILLIAMS & COMPANY, INC.

BY: [signature] Vice Pres.

Government Exhibit G 8

HAAS, SCHLESINGER & MAYERS
CERTIFIED PUBLIC ACCOUNTANTS
122 East 42nd Street, New York 17, N. Y.
MUrray Hill 5-8690

April 17, 1944

Morris O. Alprin, Esquire
420 Lexington Avenue
New York, N. Y.

Dear Sir:

I have been requested to give an opinion as to the taxability, under the Federal Internal Revenue Code, of a proposed agreement between a foreign corporation, organized under the laws of the Republic of Cuba, and a domestic corporation.

It is proposed that the Cuban corporation appoint the domestic corporation as its exclusive agent for the sale and distribution of a Canadian whiskey, produced by a Canadian corporation, and a proposed form of agreement has been submitted to me for suggestions. The agreement provides, among other things, that the domestic corporation be appointed exclusive agent for the sale of the Canadian whiskey in the United States and sets out prices at which the whiskey is to be sold, both to wholesalers and retailers. The merchandise is to be shipped from Canada f. o. b. Vancouver, and title is to pass in Canada. Payment is to be made in the United States through a letter of credit opened by the domestic corporation in favor of the Cuban corporation.

Government Exhibit G 8

This proposed transaction is covered by Section 119 of the Internal Revenue Code. Paragraph e-2 of this Section provides in part as follows:

> "Gains, profits, and income from—(2) the sale of personal property * * * produced in whole or in part by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within, and partly from sources without, the United States".

Regulations 111 Section 29.119-12 provide a means of allocating income and expense of that portion of the gains, profits, and income derived from sources which are partially within the United States, if it appears that the taxpayer is engaged in trade or business in the United States. That question, as to whether a taxpayer is engaged in a trade or business in the United States, depends upon where the sale of the product takes place. The United States Supreme Court in the case of Compania General vs. Collector, 279 U. S. 306, has decided that "the place of sale indicates the geographical source of the income". If, therefore, the sale of this merchandise takes place within the United States, the rule of Section 119, Paragraph e-2 applies. If the sale takes place outside of the United States, then that Section of the Code does not apply and the Cuban corporation would not be taxable on the profit from the sale of this merchandise.

The Bureau of Internal Revenue and the Board of Tax Appeals (now the Tax Court of the United States) are not in agreement as to the rules which govern in determining when and where a sale occurs. In G. C. M. 13475, promulgated in December 1934, the Treasury Department ruled that where a Canadian corporation produced pulp wood in Canada and sold it to an American corporation, and all

Government Exhibit G 8

regulations as to prices, terms, and conditions with respect to the sale were settled in the United States by representatives of both companies, the contract being drawn in this country and signed here by the American company, the profit from the transaction represents income derived partly from sources within and partly from sources without the United States, not withstanding that the contract was sent to Canada for signature of the officials of the Canadian company. However, the Board of Tax Appeals in the East Coast Oil Company, 31 B. T. A. 558, affirmed C. C. A. 5, 85F322, Certiorati, denied December 1936, stated as follows:

> "Respondent points to the contracts, which recite that the seller 'hereby sells and agrees to deliver' and the buyer 'hereby buys and agrees to receive' an amount of oil between specified maximum and minimum limits. But such terms are not necessarily controlling in a contract of sale. They do not necessarily evidence the actual consummation of the sale; they cannot transpose an executory contract covering unascertained goods into an instrument of present sale. Where, as here, it becomes important to determine just where and when a sale occurs, circumstances beyond mere recitals must be examined. Respondent points also to the fact that the contracts and the payments under them were made in this country, urging that here was the place of sale. Of course, the place of contract, the place of delivery and of payment, the terms of the agreement, and extraneous circumstances may each have a bearing. But the ultimate goal of the examination of all such considerations is to ascertain when and where the title to the goods passes from the seller to the buyer. It is then and there a sale is consum-

Government Exhibit G 8

mated—when and where property in the goods passes, when and where the incidents of ownership vest in the vendee. Such is the rule, long and firmly established".

A case quite similar to your own was decided in 1941 and appears to the writer to definitely settle the controversy. The case is Ronrico Corporation vs. Commissioner 44 B. T. A. 1130. Petition for review dismissed C. C. A. 5-1942. In this case, the petitioner was a corporation organized under the laws of Puerto Rico, with its principal office in San Juan. In 1935, it entered into an agreement with McKesson & Robbins, Inc., wherein the latter was appointed exclusive agent for the sale of Ronrico rum in the United States. The petitioner agreed to sell the rum at prices c. i. f. Atlantic Seaboard and further agreed to assist in popularizing this brand of rum by advertising the same in the United States, pursuant to which it established offices in this country for promotional and educational purposes. These offices were not permitted to accept orders for the petitioner, but they solicited orders for the rum on behalf of McKesson & Robbins. The petitioner had six directors, three of whom resided in Puerto Rico and three within the United States. It was not authorized to do business in any state in this country. The Treasury Department attempted to tax the Puerto Rican corporation on income from the sale of this rum. The Court stated that the principal issue in this case was whether the petitioner, a foreign corporation, had a gross income from sources within the United States, and it was agreed between the parties that the place of sale indicated the geographical sources of the income under the ruling of Compania General, Supra. The Court made the following significant statements:

Government Exhibit G 8

> "At the outset we may discard as without significance the circumstance that negotiations leading to, and the execution of the agreements, transpired in this country. No sale was effected by these transactions; they were merely preliminary to the actual sales . . .".

After quoting the East Coast Oil Company, Supra, with approval, the Court found that title to the rum had passed to McKesson & Robbins in Puerto Rico, which consequently was the place of sale, and therefore, petitioner had no income from sources within the United States.

With this preliminary review of the law, I would like to call your attention to certain portions of the proposed agreement. On Page 1, the last recital provides for the placing of an order for 100,000 cases of whiskey by the American company and the recital is carried out in Paragraph Fourteenth. In view of the Court's statement in the Ronrico case that "no sale was effected by these transactions" it would appear to me that this particular transaction may well be left out of the contract which should provide merely for a general conduct of business. The order for 100,000 cases should follow the execution of the contract. Paragraph Fifteenth also beclouds the transaction. It appears to me that final action in all matters should be taken in Cuba and not by the president, who, under the terms of Paragraph Fifteenth is "authorized and empowered to act for it and in its behalf". While the president may desire to be informed of the business, notices should be sent to Cuba, although I can see no harm in the president receiving a copy.

In view of the Court's statements in the East Coast Oil and Ronrico cases, the fact that (1) your agreements provide for payments to be made in the United States, and (2)

Government Exhibit G 8

there is a relationship between the Cuban and Canadian corporations, have no bearing on the question of the taxation of the Cuban corporation's income.

To summarize, my recommendations are as follows:

1—Eliminate the recital on the first page of the agreement referring to the order for 100,000 cases of whiskey.

2—Eliminate paragraph Fourteenth from the agreement.

3—Modify paragraph Fifteenth to provide that final action on all matters relating to the contract to be taken in Cuba, although the president may receive *copies* of the correspondence sent to Cuba.

4—After the contract is signed by the Agent in the United States, send it to Cuba to be signed by the Supplier.

5—Have the Agent, by separate instrument, send an order to Cuba for the 100,000 cases to be accepted by the Supplier in Cuba.

With the foregoing amendments to the contract, it is my opinion that the Cuban corporation would be considered a non-resident foreign corporation, not doing business within the United States, and therefore, not subject to tax on its profits from the sale of whiskey here.

Let me again point out to you that the Treasury Department refuses to follow the Court in this matter, and that it will require recourse to the Courts to sustain the foregoing position in the event of unfavorable action by the Treasury Department.

Very truly yours

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 BROADWAY
GENERAL MOTORS BUILDING
NEW YORK 19, N. Y.
CIRCLE 5-8070

Government Exhibit G 9

43a

December 29th, 1944.

R. C. Williams & Co. Inc.
265 Tenth Avenue
New York, N. Y.

Attention: Mr. Irving Koerner.

Re: Harwood Canadian Whiskey
Distillers Agencies
(Agencias Distiladores, S. A.)

Dear Mr. Koerner:

With reference to our conferences covering the above entitled matter, I confirm herewith our understanding that you are to pay me the sum of sixty cents ($ 0.60) per case on each case of Harwood Canadian Whiskey which you receive under the above contract and sell to retailers through your wholesale division.

Such compensation shall be in full and complete payment for my services in your behalf in the matter of the contract.

Please indicate your agreement by signing the enclosed copy of this letter.

Sincerely,

Morris Alprin

MOA:MF

Appd Mr Jacobs
& Mr Jabuck

Government Exhibit 10

Letter dated January 26, 1945 from Alprin to R. C. Williams, attention of Koerner, advising that Alprin was enclosing his bill in accordance with arrangement covering Harwood Whiskey which was received by R. C. Williams under the contract and sold to retailers through the Wholesale Division of R. C. Williams.

In pencil on this letter appears the entry: "$3,963.00 up to 12/31/44."

Government Exhibit 11

Letter of Morris O. Alprin to R. C. Williams & Co., attention of Mr. Koerner, dated April 7, 1947, confirming conference between Koerner and Alprin and advising that upon payment by Williams to Alprin of the 60¢ per case on sales to retailers through Williams' Wholesale Division from the time of the last settlement in March of 1946 up to the time the contract was cancelled in June 1946, Alprin's arrangement with R. C. Williams would terminate. (Typewritten portion only of letter admitted in evidence.)

Government Exhibit 12

Photostatic copy of letter on letterhead of Agencias Distiladores, S. A. to R. C. Williams & Co., dated May 8, 1944, signed Enrique de Cubas, stating that pursuant to R. C. Williams' request, it is agreeable to Agencias that Williams communicate directly with Duncan Harwood & Co., Canada, in connection with any and all matters relating to shipments of Harwood's Whiskey.

AGENCIAS DESTILADORAS S. A.

AGUIAR 411 TELEFONO M-5687

HABANA, CUBA

FACTURA DE MERCANCIAS

Factura de March 31, 1945

Comprada a AGENCIAS DESTILADORAS, S.A. (VENDEDOR) HABANA CUBA. (DIRECCION)

Por GLEN L. CLARK & CO. LONG BEACH, CALIFORNIA. (COMPRADOR O CONSIGNATARIO) U.S.A. (DIRECCION)

De acuerdo con orden aceptada _____ (FECHA)

Por cuenta de GLEN L. CLARK & CO. (NOMBRE) Car No. Southern 11724- Freight Collect (DIRECCION)

Para embarcar por V&LI BCER TO SUMAS NP TO PORTLAND SP TO SAN FRANCISCO (TRANSPORTADOR)

Marcas y números en los envases	Número o símbolo del fabricante o vendedor	Cantidades y descripción general de las mercancías	Precio por unidad	Total de Factura
1750 c/s	12 twenty-five ounce Canadian Victory Fifths	[illegible]LAND SANDY LIQUEUR WHISKEY 86.8 U.S.Proof	$17.50 per Case In Bond F.O.B. Vancouver Canada U.S.Funds	$30,625.00 U.S.Funds

SHIPPED FROM: John Dunbar & Co. Ltd. Vancouver, Canada.

Whiskey shipped in accordance with samples submitted.

DOCUMENTS ATTACHED:

(1) Original Bill of Lading.
(2) Consular Invoice (in duplucate)
(3) Certificate of Origin.
(4) Landing Certificate B.54
(5) Pure Food Certificate (in duplicate)
(6) General Imports Order M-63 (in duplicate)

PAID
APR 10 1945
GLEN L. CLARK & CO.
By Chg'd. to our Acct.

TERMS: Sight Draft against Letter of Credit No. 30[illegible] dated March 16, 1945, issued by Citizens National Trust & Savings Bank of Los Angeles, California, through Chase National Bank, New York.

Weight of Glas - All Canadian ..... 21,000 lbs.
Total U.S. Wine Gallons ..... ~~3,920.00~~ 4200.00
Total U.S. Proof Gallons ..... ~~3,402.56~~ 3645.60
Alcoholic Content by Volume 1,701.56
Product of Canada.
Manufactured and Bottled in Bond in Vancouver, B. C.
Glass Value: $889.58.

Containers are corrugated cartons, 200 pounds test minimum double strapped and bottles and containers show imported by Glen L. Clark & Co. under Import Permit L-671-H.

AGENCIAS DESTILADORAS S.A.

William Rokoff

Posted 242-A 4/4/45

Posted 52-A 4/11/45

29.

Government Exhibit 13-a

45a

Government Exhibits 13-b to 13-k, inclusive, not reproduced, are exactly the same in form and substantially the same in content as Government Exhibit 13-a, *supra*.

H. HARVEY COMPANY LIMITED
SUITE 1226, O'SULLIVAN BLDG.
TEN - LIGHT STREET
BALTIMORE - 2, MARYLAND

Nº 164

Government Exhibit 15-a

Date February 8, 1946

SOLD TO Glen L. Clark & Company
119 Linden Avenue
Long Beach, California

CAR NO.: C&S 14684
Freight Collect

Customer's Order No.

Customer's License No.

Salesman

Terms S/D - L/C

SHIPPED VIA V&LI BCER TO SUMAS NP TO PORTLAND SP TO DESTINATION

NO. OF PACKAGES	SIZE	DESCRIPTION	PRICE	TOTAL
1750 cs.	12/4/5 Qts.	AULD MALCOLM HIGHLAND LIQUEUR -86.8 U.S.PROOF	$14.92 per cs. f.o.b. Vancouver Canada In Bond	$26,110.00

SHIPPED FROM: Peter Malcolm & Company Ltd.
Vancouver, B.C., Canada

TO: Glen L. Clark & Company
c/o Overland Terminal Warehouse
Los Angeles, California

Bank Chgd Our 2/19/46 o/c 26270.36

DOCUMENTS ATTACHED:

(1) Order Bill of Lading - endorsed in blank

Documents for Customs Entry sent to: Samuel Shapiro & Company Inc.
Customs Brokers
29 S. Gay Street
Baltimore-2, Maryland

4200. Wine Gallon

Bow & Co Recd the documents 2/18

UNIT PRICE & TERMS		
ENTERED	52-A 2/	
CONSIGNEE CHGD	242-A 2/	
EXTENSIONS	2/21	

ORIGINAL

40.

Government Exhibits 15-b to 15-e, inclusive, not reproduced, are exactly the same in form and substantially the same in substance as Government Exhibit 15-a, *supra*.

INCREASE IN QUOTAS BY STATES
FOR THE MONTHS OF MAY AND JUNE

State	Increase
Alaska	3550
Arizona	3000
Arkansas	——
California	13800
Colorado	1250
Connecticut	5500
Delaware	750
Florida	4500
Georgia	3750
Illinois	——
Indiana	3750
Kentucky	2750
Louisiana	2750
Maryland	500
Massachusetts	4500
Minnesota	4000
Nebraska	1500
Nevada	1250
New Jersey	4250
New York	17250
North Dakota	4500
Rhode Island	3000
South Dakota	1250
South Carolina	——
Tennessee	1000
Texas	5250
Wisconsin	1750
District of Columbia	3000
	85,100 TOTAL INCREASE

ALLOCATIONS FOR BALANCE OF 2ND QUARTER - FROM MAY 1st TO JUNE 30th

States Representative Accounts	Cases Allocated For Period	May	June
Alaska			
McKinley Distributing Co.	4800	2400	2400
Arizona			
Crystal Coca-Cola Bottling Co., Tucson	3000	1500	1500
Arkansas			
F. Strauss & Son, Little Rock	3000	1500	1500
California			
Parrott & Company, Los Angeles	1500		1500
Brunswig Beverages, Los Angeles	1500	1500	
Western Distributing Co., Los Angeles	1250	1250	
Glen L. Clark & Co., Long Beach	1250	1250	
Jordano Bros., Santa Barbara	1250		1250
Vicks Distributing Co., Oakland	1500	1500	
Beacon Distributing Co., Sacramento	1250		1250
Wm. Lewis & Co., San Francisco	1500	1500	
Parrott & Company, San Francisco	1500		1500
Josebra Company, San Francisco	1500	1500	
Berberian Bros., Fresno	1200	1200	
Colorado			
Plains Distributing Company, Denver	3000	1500	1500
Connecticut			
Hartley & Parker Ltd., Bridgeport	1500	1500	
General Liquors, New Haven	1500		1500
J. Jackson & Co. Inc., Hartford	1500	1500	
United Importers & Distributors, New Haven	2000	1000	1000
Delaware			
Globe Liquor Company, Wilmington	2500	1250	1250
Florida			
Florida Liquor Distributors Co., Jacksonville	3500	1750	1750
Allied Liquor Distributors, Miami	2000	1000	1000
M. Goldring Corp. Pensacola	1000		1000
Consolidated Distributing Co., Tampa	1000		1000
Georgia			
National Distributing Co. Inc., Atlanta	3000	1500	1500
General Distributing Corp., Albany	1250		1250
Beverage Sales, Savannah	1500	1500	

Exhibit No. 1

States Representative Accounts	Cases Allocated For Period	May	June
Illinois			
Pioneer-Atlas Liquor Co., Chicago	6500	3250	3250
Sub Jobbers, Illinois	4000	2000	2000
Indiana			
Kiefer-Stewart Co., Indianapolis	3000	1750	1250
Mooney, Mueller, Ward Co., Indianapolis	2500	1250	1250
Kentucky			
Pilgrim Distributing Co., Newport	1500		1500
Brown-Kaiser Co., Louisville	3000	1500	1500
Louisiana			
F. Strauss & Son, New Orleans	3000	1500	1500
Schuster Wholesale Liquors, New Orleans	1500		1500
Maryland			
Han-Ver Liquor Co. Inc., Baltimore	3500	1750	1750
Massachusetts			
Atlas Distributing Corp. Worcester	3000	1500	1500
Bay State Wholesale Liquor Co., Somerville	3000	1500	1500
J. S. Contas Co. Inc., Boston	3000	1500	1500
Golden Dome Inc., Roxbury	1500	1500	
Minnesota			
George Benz Sons Inc., St. Paul	3000	1500	1500
Griggs, Cooper Co., St. Paul	7000	3500	3500
Missouri			
Mid-Continent Distributors, Kansas City	3000	1500	1500
Mid-Continent Distributors, St. Louis	3000	1500	1500
Nebraska			
Blotcky Beverage Co., Omaha	1500		1500
Nevada			
Beacon Distributing Co., Reno	1500	1500	
Sierra Wine & Liquor Co., Reno	1500		1500
New Jersey			
Galsworthy Inc., Newark	3000	1500	1500
J & J Distributing Co., Newark	3250	1500	1750
Fleming & McCaig Inc., Jersey City	1000		1000
Federal Wine & Liquor Co., Jersey City	3250	1500	1750

States Representative Accounts	Cases Allocated For Period	May	June
New Mexico			
A & G Liquor Co., Albuquerque	2750	1250	1500
New York			
R. C. Williams & Co. Inc., New York	7000	3500	3500
Standard Wine & Liquor Co., New York	3500	1750	1750
Star Liquor Dealers, New York	3500	1750	1750
Cluff & Pickering, New York	3500	1750	1750
Saccone, Speed (U.S.A.), New York	3000	1500	1500
Oxford Distributing Co., New York	3000	1500	1500
Distilled Brands Distributing Co., Great Neck	1500	1500	
Fort Orange Wholesale Liquor Co., Albany	1500		1500
McKinley Liquor Co., Buffalo	1500	1500	
Monarch Liquor Corp., Syracuse	1500		1500
Rochester Liquor Corp., Rochester	2000	1000	1000
Rodgers & Company, Albany	3000	1500	1500
North Dakota			
Congress Candy Co., Grand Forks	2000	1000	1000
J. C. Anderson, Minot	2500	1250	1250
Rhode Island			
Rotelli Liquor Co., Providence	3000	1500	1500
South Carolina			
Sirgany Wholesale Liquor, Charleston	1250	1250	
South Dakota			
Midland Distributing Co., Sioux Falls	2500	1250	1250
Tennessee			
DeSota Distributing Co., Memphis	1500	1500	
Capitol Distributing Co., Nashville	1500		1500
Texas			
Ajax Distributors, Houston	14000	7000	7000
Wisconsin			
Pioneer Liquor Company, Milwaukee	3500	1750	1750
District of Columbia			
Decker Distributing Co., Washington	3500	1750	1750
Washington Wholesale Drug Exchange, Washington	3000	1500	1500
TOTALS	196,750	98,850	97,900

South Dakota			
Midland Distributing Co., Sioux Falls	2500	1250	1250

ALLOCATION FOR BALANCE OF SECOND QUARTER - FROM MAY 1st TO JUNE 30th

STATE OF CALIFORNIA - REVISED

Account	Cases Allocated For Period	May	June
California			
Parrott & Company, Los Angeles	3500	1750	1750
Brunswig Beverages, Los Angeles	3500	1750	1750
Western Distributing Company, San Diego	3500	1750	1750
Glen L. Clark & Company, Long Beach	3500	1750	1750
Simon Levi Company, Ltd., Los Angeles	3500	1750	1750
Giordano Bros., Santa Barbara	3500	1750	1750
Vicks Distributing Company, Oakland	3000	1500	1500
Beacon Distributing Company, Sacramento	3000	1500	1500
Wm. Lewis & Company, San Francisco	3500	1750	1750
Parrott & Company, San Francisco	3500	1750	1750
Josebra Company, San Francisco	3500	1750	1750
Berberian Bros., Fresno	3250	1500	1750
TOTALS	40,750	20,250	20,500

Government Exhibit No. A

53a

R E V I S E D MAY 23, 1946

QUOTAS FOR MONTHS OF JUNE, JULY, AUGUST AND SEPTEMBER

All quotas subject to change without notice, and customer should so be advised.

Government Exhibit 16-b

54a

States Representative Accounts	June	July	August	September
Alaska				
McKinley Distributing Co.	1750	1750	1750	~~1750~~ 1700
Arizona				
Crystal Coca-Cola Bottling Co., Tucson	900	—	900	900
Arkansas				
F. Strauss & Son, Little Rock	1200	—	900	900
California				
Parrott & Company, Los Angeles	1250	900	900	900
Brunswig Beverages, Los Angeles	—	900	900	900
Western Distributing Co., San Diego	—	900	900	900
Glen L. Clark & Co., Long Beach	1750	1750	1750	~~1750~~ 1700
Jordano Bros., Santa Barbara	—	—	900	—
Vicks Distributing Co., Oakland	—	900	—	900
Beacon Distributing Co., Sacramento	—	900	—	900
Wm. Lewis & Co., San Francisco	1250	900	900	900
Parrott & Company, San Francisco	1250	900	900	900
Josebra Company, San Francisco	—	900	—	900
Berberian Bros., Fresno	—	—	900	—
Simon Levi Co. Ltd., Los Angeles	1000	900	—	900
TONKIN & MOLLIN, SAN FRANCISCO			1800 900	
Colorado				
Plains Distributing Company, Denver	900	—	900	900
Connecticut				
Hartley & Parker Ltd., Bridgeport	—	1250	—	900
General Liquors, New Haven	900	—	900	—
United Importers & Distributors, New Haven	900	—	900	900
Delaware				
Globe Liquor Company, Wilmington	—	900	—	900
Florida				
Florida Liquor Distributors Co., Jacksonville	1000	900	—	900
Allied Liquor Distributors, Miami	—	900	—	900
N. Goldring Corp., Pensacola	—	—	—	—
Consolidated Distributing Co., Tampa	—	—	—	—

General Liquors, New Haven				
United Importers & Distributors, New Haven	900	—	900	900

States Representative Accounts	June	July	August	September
Georgia				
National Distributing Co. Inc., Atlanta	1250	—	~~900~~ Cancelled	~~1000~~ 0/S
General Distributing Corp., Albany	—	—	—	—
Illinois				
Pioneer-Atlas Liquor Co., Chicago	3250	2000	1750	1750
Sub Jobbers, Illinois	2000	1000	750	750
Indiana				
Kiefer-Stewart Co., Indianapolis	900	—	500	500
Mooney, Mueller, Ward Co., Indianapolis	900	—	500	500
Kentucky				
Pilgrim Distributing Co., Newport	—	—	900	—
Brown-Kaiser Co., Louisville	—	900	—	~~900~~ Cancelled
Louisiana				
F. Strauss & Son, New Orleans	900	—	900	900
Schuster Wholesale Liquors, Shreveport	900	—	—	—
Maryland				
Han-Ver Liquor Co., Inc., Baltimore	1500	—	1000	1250
Massachusetts				
Atlas Distributing Corp., Worcester	900	—	900	900
Bay State Wholesale Liquor Co., Somerville	900	—	900	900
J. S. Contas Co., Inc., Boston	—	—	900	900
Minnesota				
George Benz Sons Inc., St. Paul	900	—	900	900
Griggs, Cooper Co., St. Paul	1500	1500	1000	1250
Missouri				
Mid-Continent Distributors, Kansas City	900	900	—	1000
Mid-Continent Distributors, St. Louis	900	—	—	—
Nebraska				
Blotcky Beverage Co. Inc., Omaha	900	—	—	900

Government Exhibit No 13

States Representative Accounts	June	July	August	September
Nevada				
Sierra Wine & Liquor Co., Reno	1200	—	—	~~1000~~ 950
New Jersey				
Dalgworthy Inc., Newark	1500	1000	1000	1250
J & J Distributing Co., Newark	1500	1000	1000	1250
Fleming & McCaig Inc., Jersey City	900	—	—	—
Federal Wine & Liquor Co., Jersey City	1500	1000	1000	1250
New Mexico				
A & C Liquor Co., Albuquerque	1250	—	—	900
New York				
R. C. Williams & Co.,Inc.,New York	~~2000~~ 2000	~~2750~~ 2750	~~2500~~ 2500	~~1500~~ 1500
Standard Wine & Liquor Co., New York	1200	1500	1200	1250
Star Liquor Dealers, New York	1200	1500	1200	1250
Jardine Co., New York	1200	1500	1200	1250
Saccone,Speed(U.S.A.), New York	900	900	900	—
Oxford Distributing Co., New York	1500	1000	1000	1250
Distilled Brands Distributing Co.,Great Neck	1000	1000	—	~~1000~~ omitted
McKinley Liquor Co., Buffalo	900	—	900	—
Monarch Liquor Corp., Syracuse	900	—	900	—
Rochester Liquor Corp., Rochester	900	—	900	—
Rodgers & Company, Albany	900	—	900	900
Cambridge Distributing Co. Ltd.,New York	—	—	—	—
Fort Orange Wholesale Liquors, Albany	—	1000	—	—
	17800	11150	12600	8900
North Dakota				
J. C. Anderson, Minot	—	—	—	900
Rhode Island				
Rotelli Liquor Co., Providence	1000	—	900	900
South Carolina				
Sirgany Wholesale Liquor, Charleston	—	—	900	—
South Dakota				
Midland Distributing Co., Sioux Falls	900	—	—	900

MONOPOLY STATES - REVISED EFFECTIVE MAY 24, 1946

QUOTAS FOR MONTHS OF JUNE, JULY, AUGUST, AND SEPTEMBER

States	June	July	August	September
Idaho	1000	—	1000	900
Maine	—	~~1000~~	—	900
Michigan	1500	1000	1750	1750
Montana	1000	—	1000	~~1000~~
New Hampshire	—	1000	—	—
Ohio	1000	1000	1500	1500
Oregon	1750	1000	~~1000~~	~~1750~~
Pennsylvania	1400	—	1500	1750
Vermont	—	900	—	—
Virginia	—	1000	—	1000
West Virginia	—	~~1000~~	1000	900
Wyoming	~~1000~~	—	Cancelled ~~1000~~	Cancelled ~~900~~
TOTALS	8650	7900	9750	~~12~~,350

Note; There can be no deviation whatsoever from the allocations set out above. Under no circumstances can one month's allocation be put into another month. It must be scheduled in accordance with the above and the above only.

Government Exhibit 16 B

57a

States Representative Accounts	June	July	August	September
Tennessee				
DeSota Distributing Co., Memphis	—	900	—	900
Capitol Distributing Co., Nashville	—	—	900	900
Texas				
Ajax Distributors, Houston	3500	3000	2500	3000
Wisconsin				
Pioneer Liquor Company, Milwaukee	1000	1000	900	1000
District of Columbia				
Decker Distributing Co., Washington	1400	900	—	900
Washington Wholesale Drug Exchange, Washington	1000	900	—	900
TOTALS	61,800	42,700	~~44,900~~ 48,700	57,450

NOTE: There can be no deviation whatsoever from the allocation set out above. Under no circumstances can one month's allocation be put into another month. It must be scheduled in accordance with the above and the above only.

Government Exhibit 16 B

58a

QUOTAS FOR MONTHS OF JUNE, JULY, AUGUST, AND SEPTEMBER

All quotas subject to change without notice, and customer should so be advised.

States Representative Accounts	June	July	August	September
Alaska				
McKinley Distributing Co.	~~900~~ 1750	~~900~~ 1750	~~900~~ 1750	~~900~~ 1750
Arizona				
Crystal Coca-Cola Bottling Co., Tucson	900	—	900	900
Arkansas				
F. Strauss & Son, Little Rock	1200	—	900	900
California				
Parrott & Company, Los Angeles	1250	900	900	900
Brunswig Beverages, Los Angeles	—	900	900	900
Western Distributing Co., San Diego	—	900	900	900
Glen L. Clark & Co., Long Beach	~~1250~~ 1750	~~900~~ 1750	~~900~~ 1750	~~900~~ 1750
Jordano Bros., Santa Barbara	—	—	900	—
Vicks Distributing Co., Oakland	—	900	—	900
Beacon Distributing Co., Sacramento	—	900	—	900
Wm. Lewis & Co., San Francisco	1250	900	900	900
Parrott & Company, San Francisco	1250	900	900	900
Josebra Company, San Francisco	—	900	—	900
Banbardian Bros., Fresno	—	—	900	—
Simon Levi Co. Ltd., Los Angeles	1000	900	—	900
Colorado				
Plains Distributing Company, Denver	900	—	900	900
Connecticut				
Hartley & Parker Ltd., Bridgeport	—	1250	—	900
General Liquors, New Haven	~~1000~~ 900	—	900	~~00~~ —
United Importers & Distributors, New Haven	~~1000~~ 900	—	900	900
Delaware				
Globe Liquor Company, Wilmington	—	900	—	900
Florida				
Florida Liquor Distributors Co., Jacksonville	1000	900	—	900
Allied Liquor Distributors, Miami	—	900	—	900
N. Goldring Corp., Pensacola	—	—	—	—
Consolidated Distributing Co., Tampa	—	—	—	—
Georgia				
National Distributing Co. Inc., Atlanta	1250	—	900	1000
General Distributing Corp., Albany	—	—	—	—

Government Exhibit 16-c

59a

Government Exhibit No. 60a

States Representative Accounts	June	July	August	September
Illinois				
Pioneer-Atlas Liquor Co., Chicago	3250	2000	1750	1750
Sub Jobbers, Illinois	2000	1000	750	750
Indiana				
Kiefer-Stewart Co., Indianapolis	900	—	Paid Can't 500	Paid Can't 500
Mooney, Mueller, Ward Co., Indianapolis	900	—	500	500
Kentucky				
Pilgrim Distributing Co., Newport	—	—	900	—
Brown-Kaiser Co., Louisville	—	900	—	900
Louisiana				
F. Strauss & Son, New Orleans	900	—	900	900
Schuster Wholesale Liquors, Shreveport	900	—	—	—
Maryland				
Han-Ver Liquor Co. Inc., Baltimore	1500	—	1000	1250
Massachusetts				
Atlas Distributing Corp., Worcester	900	—	900	900
Bay State Wholesale Liquor Co., Somerville	900	—	900	900
J. S. Gontas Co. Inc., Boston	~~900~~	—	900	900
Minnesota				
George Benz Sons Inc., St. Paul	900	—	900	900
Griggs, Cooper Co., St. Paul	1500	1500	~~900~~	1250
Missouri				
Mid-Continent Distributors, Kansas City	900	900	—	1000
Mid-Continent Distributors, St. Louis	900	—	—	—
Nebraska				
Blotcky Beverage Co. Inc., Omaha	900	—	~~900~~	900
Nevada				
Sierra Wine & Liquor Co., Reno	1200	—	~~900~~	1000
New Jersey				
Galsworthy Inc., Newark	1500	1000	~~900~~	1250
J & J Distributing Co., Newark	1500	1000	~~900~~	1250
Fleming & McCaig Inc., Jersey City	900	—	—	—
Federal Wine & Liquor Co., Jersey City	1500	1000	900	1250
New Mexico				
A & C Liquor Co., Albuquerque	1250	—	~~900~~	900

States Representative Accounts	June	July	August	September
New York				
R. C. Williams & Co. Inc., New York	2000	2750	1500	1500
Standard Wine & Liquor Co., New York	~~1900~~ 1200	1500	1000	1250
Star Liquor Dealers, New York	~~1900~~ 1200	1500	1000	1250
Jardine Co., New York	~~1900~~ 1200	1500	1000	1250
Saccone, Speed (U.S.A.), New York	~~900~~ —	900	900	—
Oxford Distributing Co., New York	1500	1000	1000	1250
Distilled Brands Distributing Co., Great Neck	1000	1000	—	1000
McKinley Liquor Co., Buffalo	900	—	900	—
Monarch Liquor Corp., Syracuse	900	—	900	—
Rochester Liquor Corp., Rochester	900	—	900	—
Rodgers & Company, Albany	900	—	900	900
Cambridge Distributing Co. Ltd., New York	—	—	—	—
Fort Orange Wholesale Liquors, Albany	—	1000	—	
North Dakota				
J. C. Anderson, Minot	—	—	—	900
Rhode Island				
Rotelli Liquor Co., Providence	1000	—	900	900
South Carolina				
Sirgany Wholesale Liquor, Charleston	—	—	—	—
South Dakota				
Midland Distributing Co., Sioux Falls	900	—	—	900
Tennessee				
DeSoto Distributing Co., Memphis	—	900	—	900
Capitol Distributing Co., Nashville	—	—	900	900
Texas				
Ajax Distributors, Houston	3500	3000	2500	3000
Wisconsin				
Pioneer Liquor Company, Milwaukee	1000	1000	900	1000
District of Columbia				
Decker Distributing Co., Washington	1400	900	—	900
Washington Wholesale Drug Exchange, Washington	1000	900	—	900
TOTALS	~~60,900~~ 61,800	39,500	44,300	55,350

Note: There can be no deviation whatsoever from the allocations set out above. Under no circumstances can one month's allocation be put into another month. It must be scheduled in accordance with the above and the above only.

MONOPOLY STATES

QUOTAS FOR MONTHS OF JUNE, JULY, AUGUST, AND SEPTEMBER

States	June	July	August	September
Idaho	1000	—	1000	900
Maine	—	1000	—	900
Michigan	1500	1000	1750	1750
Montana	1000	—	1000	1000
New Hampshire	—	1100	—	[illegible]
Ohio	1000	1000	1500	1500
Oregon	1750	1000	1000	1750
Pennsylvania	~~1500~~	—	1500	1750
Vermont	—	900	—	—
Virginia	—	1000	—	1000
West Virginia	—	1000	—	900
Wyoming	1000	—	1000	900
TOTALS	8750	~~6900~~ 7700	~~8750~~ 7700	~~12050~~ 12050

Note: There can be no deviation whatsoever from the allocations set out above. Under no circumstances can one month's allocation be put into another month. It must be scheduled in accordance with the above and the above only.

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Government Exhibit 16 C

Government Exhibit 16-d

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QUOTAS FOR MONTH OF NOVEMBER

States Representative Accounts	November
Alaska	
McKinley Distributing Co.	1250
Arizona	
Crystal Coca-Cola Bottling Co., Tucson	900
Arkansas	
F. Strauss & Son, Little Rock	900
California	
Parrott & Company, Los Angeles	1200
Brunswig Beverages, Los Angeles	1200
Western Distributing Co., San Diego	1200
~~Glen L. Clark & Co., Long Beach~~ LONG BEACH	~~1200~~ 1200 Cancelled by Mr. [illegible] [illegible] [illegible] out of business
Jordano Bros., Santa Barbara	—
Vicks Distributing Co., Oakland	1000
Beacon Distributing Co., Sacramento	1000
Wm. Lewis & Co., San Francisco	1200
Parrott & Company, San Francisco	1200
Josebra Company, San Francisco	1200
Berberian Bros., Fresno	—
Simon Levi Co. Ltd., Los Angeles	1200
Tonkin & Modlin, San Francisco	900
Josebra Company, Los Angeles	1200
Colorado	
Plains Distributing Company, Denver	1000
Connecticut	
Hartley & Parker Ltd., Bridgeport	1000
General Liquors, New Haven	1000
United Importers & Distributors, New Haven	900
J. Jackson & Co., Hartford	900
Delaware	
Globe Liquor Company, Wilmington	1000
Florida	
Florida Liquor Distributors, Jacksonville	~~1250~~ Cancelled
Allied Liquor Distributors, Miami	2000
Georgia	
National Distributing Co. Inc., Atlanta	—
Illinois	
Pioneer-Atlas Liquor Co., Chicago	3250
Sub Jobbers, Illinois	1250

16.

States Representative Accounts	November	
Indiana		
Kiefer-Stewart Co., Indianapolis	700	
Moomey-Moeller, Ward Co., Indianapolis	700	
Kentucky		
Pilgrim Distributing Corp., Newport	—	
Brown-Kaiser Co., Louisville	—	
Louisiana		
F. Strauss & Son, New Orleans	1000	
Maryland		
Han-Ver Liquor Co. Inc., Baltimore	1600	
Massachusetts		
Atlas Distributing Corp., Worcester	—	
Bay State Wholesale Liquor Co., Somerville	1000	
J. S. Gontas Co. Inc., Boston	1000	
Charles Gilman & Co., Boston	1000	
Minnesota		
Griggs, Cooper & Co., St. Paul	1600	
Missouri		
Mid-Continent Distributors, Kansas City	900	
Hamm-Singer Corp., Kansas City	~~900~~ Cancelled	
Mid-Continent Distributors, St. Louis	900	
Nebraska		
Blotcky Beverage Co. Inc., Omaha	900	
Nevada		
Sierra Wine & Liquor Co., Reno	900	
New Jersey		
J & J Distributing Co., Newark	1100	
Federal Wine & Liquor Co., Jersey City	1100	
Fleming & McCaig, Jersey City	900	
Galsworthy Inc., Newark	1100	
New Mexico		
A & S Liquor Co., Albuquerque	900	

States Representative Accounts	November		
New York			
R. C. Williams & Co. Inc., New York	3500	✓	
Standard Wine & Liquor Co., New York	1300	✓	
Star Liquor Dealers, New York	1300	✓	
Jardine Co., New York	1300	✓	
Saccone, Speed (U.S.A.), New York	900	✓	
Oxford Distributing Co., New York	1300	✓	
Distilled Brands Distributing Co., Great Neck	—	✓	
McKinley Liquor Co., Buffalo	—	✓	
Monarch Liquor Corp., Syracuse	—	✓	
Rochester Liquor Corp., Rochester	—	✓	
Rodgers & Company, Albany	900	✓	
~~Rumpo Distributing Co., Newburgh~~			
Atlantic Wholesale, New York	4000	✓	
North Dakota			
J. C. Anderson, Minot	900	✓	
Rhode Island			
Rotelli Liquor Co., Providence	—		
South Carolina			
Sirgany Wholesale Liquor Co., Charleston	—		
South Dakota			
Midland Distributing Co., Sioux Falls	~~900~~ Cancelled		
Tennessee			
DeSota Distributing Co., Memphis	—		
Capitol Distributing Co., Nashville	—		
Texas			
Ajax Distributors, Houston	—		
Wisconsin			
Pioneer Liquor Company, Milwaukee	1200		
District of Columbia			
Decker Distributing Co., Washington	1000		
Washington Wholesale Drug Exchange, Washington	1000		

Government Exhibit No. D

65a

MONOPOLY STATES

QUOTAS FOR MONTH OF NOVEMBER

	States	November
	Idaho	—
	Maine	~~900~~ ✓
✓	Michigan	~~5500~~ ~~2800~~ ✓
	Montana	900 ✓
	New Hampshire	—
✓	Ohio	2200 ✓
	Oregon	~~5500~~ ~~2500~~ ~~1500~~ ✓
✓	Pennsylvania	~~3500~~ ~~2800~~ ✓
	Vermont	—
	Virginia	~~1000~~ →
✓	West Virginia	1000 ✓
	Wyoming	—
	TOTAL	~~13,100~~ ~~14,100~~ ✓ 15,100 Cases

Government Exhibit No. 10

Government Exhibit G 17

May 18, 1946

Dear Irv:

Please change your sheets according to the attached sheet.

Please change your quotas for the following.

	June	July	August	September
Alaska				
McKinley Distributors	*1750*	*1750*	*1750*	*1750*
California				
Glen L. Clark & Co., Long Beach	*1750*	*1750*	*1750*	*1750*

Government Exhibit G 18

January 2, 1946

R. C. Williams & Co. Inc.
265 Tenth Avenue,
New York City, N. Y.

Att: Mr. I. A. Koerner, Manager,
Liquor Division

Dear Sir:

Supplementing our letter of December 29th, 1945, to you, regarding assignment by Agencias Destiladoras, S. A. to us of their agreement with you covering Harwood's Blended Canadian Whisky, we hereby advise you that we have assumed and hereby agree to perform all the conditions and carry out all the provisions required of Agencias Destiladoras, S. A. to be performed and carried out under the aforesaid agreement.

Yours very truly,

CIA. RAMSEY, SCOTT EXPORTADORES, S. A.

By: (Illegible)
Vice-President.

EC/hgz

Government Exhibit G 21

HYMAN HARVEY KLEIN
2700 WILMARCO AVENUE
Baltimore, Maryland

March 7, 1944

VIA AIR MAIL

Mr. R. Harold Ostrow
J. & J. Dunbar & Company
2203 First Avenue South
Seattle, Washington

Dear Harold:

Enclosed you will find a copy of letter written to I. J. by Attorney J. Stanley Halperin while he was in New York which you will find interesting and self explanatory.

Kind regards.

Yours sincerely,

H. H. KLEIN
H. H. KLEIN

HHK:rh
Enclosure

Government Exhibit G 21

J. STANLEY HALPERIN
COUNSELOR AT LAW
25 Broadway
New York

Bowling Green 9-6837

March 3, 1944

Mr. I. J. Klein
C/o Waldorf-Astoria Hotel
50th Street and Park Avenue
New York, New York

Dear Mr. Klein:

Reference is made to our conference on Tuesday evening, February 29, 1944 at which time you presented certain facts respecting a corporation which was to be formed, and requested the following written opinion thereon:

The Facts

The facts, as submitted by you and on which this opinion is based, are set forth in the following paragraphs:

It appears that individuals A, B, and C, all American citizens, and individual D, a resident alien of the United States, (hereinafter referred to as the "American group"), are desirous of going into the business of buying up liquor stocks from distilleries and reselling same to marketers and distributors. They contemplate the purchase and sale of all kinds of liquor. Their activities will be carried on not only in the United States, but any other country in which such pearing that due to the present world-wide liquor shortage, inability to purchase liquor stocks from distilleries, it ap-

One of the problems facing the American group is its activities will prove profitable and advisable.

Government Exhibit G 21

whiskey manufacturers are not predisposed to sell a large part of their inventories, especially where they may not charge more per case than the government-fixed price. The American group has been in contact with individuals E and F, both Canadian citizens and residents, (hereinafter referred to as the "Canadian group". The Canadian group is in a position to obtain a contract from a Canadian distillery whereby the latter will agree to sell to the Canadian group or its nominee, within a certain period of time, a certain number of cases of liquor, at the government-fixed price. In addition, it can obtain similar agreements from other distilleries, not only in Canada, but other countries as well.

It is proposed that the American and the Canadian groups join forces, since it is apparent that a merger of the Canadian group, which is in a position to purchase liquor stocks from distilleries, and of the American group, which is in a position to sell said liquor stocks, would result in a successful enterprise.

The manner in which it is proposed to combine these groups is by the organization of a corporation, in which the American group will own more than 50% of the stock, the balance going to the Canadian group. However, the problem arose as to which country should be the country of incorporation. It was pointed out that if it were Canadian, then it could not sell the Canadian liquor stocks in excess of cost, since the selling price was government-fixed, and it was at that price that the liquor stocks would be purchased. On the other hand, the Canadian group objected to it being American, for the reason that it might be necessary to secure licenses from the various governmental authorities, and that since it is expected that the corporation will do business to a very large extent in Latin America business-wise it might be more advisable not to be a United States corporation. Lastly both groups contemplate that Havana

Government Exhibit G 21

will be the prinicpal place of business and also contemplate the admission of Cuban interests into the corporation, since Cuba is the hub of the Latin-American liquor industry, and the parties plan to do considerable business in this area. In view of the foregoing, and other business reasons, it has been decided to organize a Cuban corporation.

Once having been organized, with offices opened in Havana, the Cuban corporation will, as its first step, purchase the liquor stock from the Canadian distillery. The liquor is at present in a bonded warehouse in Canada, and presumably, the Cuban corporation would get the warehouse receipts.

The corporation will then proceed to find a distributor or distributors within the United States who will be financially dependable and who will undertake to distribute the liquor. It has not been decided whether there will be one national distributor with a separate subdistributor for each state, or whether there will be 48 sole distributors, one for each state. In any event, it is contemplated that an arrangement would be made with the distributor wherein he will undertake the distribution of the liquor. It is contemplated that the Cuban corporation will sell the liquor, in Cuba—title to pass there, to the distributor. This may be done in the following fashion—the distributor will send his order to Havana, where, if accepted, the Cuban corporation will then arrange for its release and shipment from Canada, in a "c. i. f. transaction" to the distributor. In addition, it is contemplated that the Cuban corporation will give free samples to the distributors and will establish an office for promotional and educational purposes, which will assist the distributors in promoting and advertising the liquor and will help to solicit orders for said liquor on behalf of the distributor, but which office will not be allowed to accept any orders on behalf of the Cuban corporation.

Government Exhibit G 21

Discussion

Based on the facts submitted, there are a number of tax problems which arise and whose applicability must be considered.

In the first place, the American citizens (A, B and C) and the resident alien of the United States (D) presumably will subscribe in cash to the stock of this new corporation. This will not result in any tax problem, since no gain or loss is realized upon subscription to stock, same being nothing more than a purchase thereof.

While it is true that there is a provision imposing a tax on transfers to foreign corporations where the transfer is "in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes", said tax is imposed only on the transfer of stock or securities as paid-in surplus or as a contribution to capital. Since, in the instant case, neither stock or securities are involved, the provision is inapplicable.

Another provision which must be kept in mind is the section dealing with foreign personal holding companies, wherein the American shareholders are required to report and include, as taxable dividend income, their proportionate share of the corporation's earnings. Since the proposed Cuban corporation will be an operating company, this provision will likewise not be applicable. Thus, it appears that merely subscribing in cash and owning the stock of a foreign corporation, which is actively engaged in the conduct of a business, does not involve any tax problem.

In the second place, assuming the organization of the Cuban corporation, the next step will be the purchase of the liquor stock from the Canadian distillery. Here again, there is no tax problem, since the purchase by the Cuban corporation does not give rise to any income.

Government Exhibit G 21

The Cuban corporation will then proceed to dispose of the liquor. It is expected that the liquor will be sold to United States distributors. At this point the problem arises as to whether the profit on the sale will be subject to tax by the United States.

In the case of a foreign corporation, the United States imposes a tax on its income from *sources within the United States*. The Cuban corporation will have only one source of income, namely, the sale of liquor. Obviously, if that source is *without (outside) the United States*, it will have no income from sources within the United States and accordingly, there can be no tax.

The applicable statute and regulations provide that income derived from the purchase and sale of personal property shall be treated as derived *entirely* from the country in which it is sold. It then becomes a very important question to determine which country was the place of sale. If the United States is determined to be the place of sale, then all profits realized on the sale will be deemed to be income from sources within the United States. In such event, the corporation would be deemed to be engaged in trade or business within the United States and would be classified as a resident foreign corporation, subject to normal tax, surtax and excess-profits tax on its United States income.

The manner of sale must then be considered. In the instant case, it is proposed to obtain a distributor in the United States and to enter into a contract providing for c. i. f. sales. A "c. i. f. sale" means that the seller will place the goods aboard a common carrier, prepay the freight, obtain proper insurance, deliver the bill of lading to the buyer, and collect a lump price which includes the freight and insurance which the seller has paid. Under such a contract, it has been held that title to the goods and the risk in-

Government Exhibit G 21

volved pass to the buyer at the point of shipment (assuming the seller has done everything set out above). Thus, if the final acts essential to the sale, to wit, the shipment of the goods and the forwarding of the documents, take place in Cuba, Cuba will be considered the place of sale.

However, please bear in mind that very frequently the action of the parties may be such as to indicate that sale took place within the United States. It will be incumbent upon the Cuban corporation, therefore, to make certain that all orders are transmitted to Havana, that it do not accept any orders wintin the United States, and that if there is any departure from a mode of operation once determined, that such departure first be passed on as to whether the place of sale might be considered as taking place within the United States.

It is also suggested that, in addition to making certain that the place of sale is outside the United States, you make certain that the place of sale is not considered to be within Canada. This is because you have stated that you wish the place of sale to be Cuba, and some question of Canadian law might arise, inasmuch as the liquor will have to be shipped to the buyer, for your account, by the Canadian warehouse. In such case, it might be construed that the place of sale is Canada, since that would be where you performed the final act essential to the sale. It might be necessary for you to rearrange your method of operation so that all the Cuban corporation sold was warehouse receipts.

Assuming, that your method of operation is so arranged that all sales take place outside the United States, it has been held that the facts that (1) negotiations leading to and the execution of agreements with the distributors take place in the United States and (2) the foreign corporation established offices for promotional and educational purposes in the United States and (3) its employees solicit

orders from wholesalers on behalf of the distributors—do not in any wise change the result—and thus, having made no sales in the United States, it will have no income from sources within the United States, and accordingly, no liability for tax.

There is one further problem which must be considered by the individuals comprising the "American group". Section 128 of the Revenue Act of 1943 adds a new section to the Internal Revenue Code which provides that if any person or persons acquire control of a corporation "and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit or other allowance shall not be allowed". Control means ownership of at least 50% of the voting stock or 50% of the total value of shares of all classes of stock.

Based on the facts submitted, it does not appear that this new section would be applicable. While it is true that more than 50% of the stock will be owned by the American group, a serious question arises as to the meaning of the phrase "acquire control of a corporation". The legislative history underlying this section indicates that it is intended to apply only to an existing corporation. Thus, in the instant situation where a new corporation is being organized, it appears that the new section would not apply and the subscription to its stock would not be interpreted as "acquisition" of control of a corporation.

But assuming for the sake of argument that it could be so interpreted, it would next be necessary to establish that the principal purpose was evasion or avoidance of Federal income or excess profits tax. If the principal purpose were a sound business reason, and it was all part of a bona fide

Government Exhibit G 21

course of business conduct, then no allegation of a purpose of evasion or avoidance would be contendable. So does it appear in the instant case. The formation of the Cuban corporation has for its purpose the conduct of an international liquor business; the stockholders of which will be not only Americans but nationals of other countries as well; the place of business of which will be in the country of its incorporation, the legal rights of which will best be protected by being a corporation; and the manner of conduct of its affairs can, from the practical business viewpoint, be carried on only by the corporate form of doing business. Not only does it appear that this new section has no application to the facts in the instant case, but also, the principles enunciated in various Supreme Court decisions, disregarding devices and entities having no purpose except tax avoidance, are likewise inapplicable. There is still no law which forbids and prevents an American citizen or resident from investing in the stock of a foreign corporation, whose country of incorporation is in the Western Hemisphere.

Conclusion

Based on the facts submitted and hereinbefore set forth, there will be no United States tax imposed on the subscription to the stock of the Cuban corporation; there will be no income of the Cuban corporation subject to United States tax if all its sales are made outside the United States; and it does not appear that the Cuban corporation will be considered as being acquired by the American group for the principal purpose of evasion or avoidance of Federal income and excess profits taxes.

Very truly yours,

/s/ J. Stanley Halperin

Government Exhibit G 24

AGENCIAS DESTILADORAS, S. A.
AGUIAR 41E, 5o. PISO
TELEFONO M-5687
LA HABANA

✦

December 28th. 1945.

R. C. Williams & Co., Inc.,
205 Tenth Ave.,
New York, N. Y.

Gentlemen:

This is to advise you that our business operations have been transferred to Compañia Ramsey, Scott, Exportadores (Ramsey, Scott Co., Exporters, Inc.) Aguiar No. abana, Cuba.

We have assigned to Compañia Ramsey, Scott, Exportadores, S. A. effective January 15th., 1946, our agreement with you relative to the sale and distribution of Harwood blended Canadian Whiskey and they propose to carry out with your Company all transactions in the same manner as we have done.

It is in order that you re-establish your letter of credit, effective January 15th. 1946, in favor of our successors.

Thanking you, we are,

Very truly yours,

AGENCIAS DESTILADORAS, S. A.

By: F. GURRI
Vice-President

FG hgz

CIA. RAMSEY, SCOTT EXPORTADORES, S. A.
(RAMSEY, SCOTT CO. EXPORTERS, INC.)
AGUIAR 411, 3o. PISO
HABANA, CUBA

December 29th., 1945.

R. C. Williams & Co., Inc.,
265 Tenth Ave.,
New York, N. Y.,
U. S. A.

Gentlemen:

We have taken over the business formerly conducted by Agencias Destiladoras, S. A., of Havana, Cuba, and pursuant thereto have taken an assignment of their agreement with you for the sale and distribution of Harwood blended Canadian Whiskey, such assignment becoming effective January 15, 1946.

Will you kindly acknowledge this letter and advise us that you have established your Letter of Credit effective January 15, 1946, in our favor for which we thank you.

Yours very truly,

CIA. RAMSEY, SCOTT EXPORTADORES, S. A.

By:

Vice-President.

EC/hgz

Government Exhibit G 25

Government Exhibit 88-a

Translation of Panamanian Certificate of Incorporation of Regan, Potter & Co., Ltd., S. A., dated April 9, 1945. It states that directors and officers shall be Hyman Harvey Klein, Isidore Jacob Klein, Albert Loftus, Edward McLennan and Ellis Rosenberg.

Government Exhibit 89-a

Translation of Panamanian Certificate of Incorporation of Tivoli Trading Co., S. A., dated April 9, 1945. It states that the directors shall be Ellis Rosenberg, Hyman Harvey Klein, Harris Samuel Lechtzier and Albert Roer and that the officers shall be Ellis Rosenberg, Edward McLennan, Harris Samuel Lechtzier and Albert Roer.

Government Exhibit 90-a

Translation of Panamanian Certificate of Incorporation of Waldorf & Co., S. A., dated December 19, 1945. The directors of the corporation are listed as Enrique de Cubas, Ricardo Moran and Francisco Gurri—all of Havana, Cuba.

Government Exhibit 91-a

Translation of Panamanian Certificate of Incorporation of Seaboard Syndicate, S. A., dated December 19, 1945. The directors of the corporation are listed as Enrique de Cubas, Ricardo Moran and Francisco Gurri—all of Havana, Cuba.

Government Exhibit 92-a

Translation of Panamanian Certificate of Incorporation of Cameron Stuart Co., dated November 8, 1945. The directors of the corporation are listed as Enrique de Cubas, Ricardo Moran and Francisco Gurri—all of Havana, Cuba.

Government Exhibit 93-a

Translation of Panamanian Certificate of Incorporation of Douglas Ryan Syndicate, dated January 20, 1945. The directors are listed as Hyman Harvey Klein, Ellis Rosenberg and Edward McLennan and the officers are listed as Hyman Harvey Klein, Edward McLennan, Ellis Rosenberg, Harris Samuel Lechtzier and Harry Heath Allen, Jr.

Government Exhibit 117-a

April 16th, 1946.

Mr. Mortimer J. Glueck,
Bishop Trust Building,
Bishop & King Sts.,
Honolulu 48, Hawaii.

Dear Mr. Glueck:—

I understand you are making application for a wholesale Liquor License in Hawaii and for the necessary basic permit from the Alcohol Tax Unit.

Upon the issuance of such licenses and subject, of course, to the availability of supplies of Harwood's Blended Canadian Whiskey from our Canadian shipper, we shall be pleased to supply you with such merchandise to the extent of our ability so to do.

Wishing you every success in your venture, we remain

Very truly yours,

R. C. WILLIAMS & CO. INC.

I. A. KOERNER
MANAGER-LIQUOR DEPARTMENT.

IAK:SR

Government Exhibit 117-b

R. C. WILLIAMS & CO. INC.
265 TENTH AVENUE
New York, N. Y.

April 1946.

Mr. Mortimer J. Glueck
Bishop Trust Building
Bishop and King Sts.
Honolulu (48) Hawaii.

Dear Mr. Glueck:

I understand you are making application for a wholesale liquor license in Hawaii and for the necessary basic permit from the Alcohol Tax Unit.

Upon the issuance of such licenses and subject, of course, to the availability of supplies of HARWOOD from our Canadian shipper, we shall be pleased to supply you with such merchandise to the extent of our ability so to do.

Wishing you every success in your venture, we remain

Very truly yours,

R. C. WILLIAMS & CO. INC.

By: .....

Government Exhibit 117-c

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 Broadway
General Motors Building
New York 19, N. Y.

CIrcle 5-8070

April 5th, 1946.

R. C. Williams & Co., Inc.
265 Tenth Avenue
New York, N. Y.

Attention Mr. Irving Koerner.
Re: Mortimer J. Glueck, Honolulu, Hawaii.

Dear Mr. Koerner:

Confirming our telephone conversation, I am enclosing herewith draft of letter for you to write Mr. Glueck to assist him in obtaining his basic permit and other permits as a wholesaler in Hawaii.

As I told you, Mr. Glueck cabled that the tidal wave had destroyed considerable amount of merchandise in Hawaii and urged your consideration of offering him HARWOOD or other merchandise to replace the supplies. I trust as conditions warrant, you will be able to do your best for him.

Sincerely,

MORRIS O. ALPRIN

MOA:MF

Government Exhibit 118-a

August 2nd, 1945.

Agencias Distiladores, S. A.,
411 Aguiar
Havana, Cuba.

RE: HARWOOD GIN

Gentlemen:—

We understand that the distillery has available HARWOOD GIN produced in Canada.

We are interested in the item and believe that many of the customers purchasing HARWOOD WHISKEY would also be interested.

If such merchandise will be available for sale, will you please give us full details, copy of the label, proof, sizes, prices, terms of payment, etc. etc.

If it is agreeable to you, we would like this item added to and made a part of our agreement with you.

Will you please write us about this.

Very truly yours,

R. C. WILLIAMS & Co. INC.

I. A. KOERNER
I. A. Koerner
Manager—Liquor Department.

IAK:SR

Government Exhibit 118-b

R. C. WILLIAMS & CO. INC.
265 TENTH AVENUE
NEW YORK, N. Y.

August 2nd, 1945.

Agencias Distiladores, S. A.
411 Aguiar
Havana, Cuba.

RE: HARWOOD GIN.

Gentlemen:

We understand that the distillery has available HARWOOD GIN produced in Canada.

We are interested in the item and believe that many of the customers purchasing HARWOOD WHISKEY would also be interested.

If such merchandise will be available for sale, will you please give us full details, copy of the label, proof, sizes, prices, terms of payment, etc. etc.

If it is agreeable to you, we would like this item added to and made a part of our agreement with you.

Will you please write us about this.

Very truly yours,

R. C. WILLIAMS & CO. INC.

Government Exhibit 119-a

August 2nd, 1945.

Agencias Distiladores, S. A.
411 Aguiar,
Havana, Cuba.

RE: HARWOOD WHISKEY.

Gentlemen:—

We believe the time is now propitious for sales of HARWOOD WHISKEY to Monopoly States. Before going into such business, however, there are several matters we present for your consideration.

1st: The matter of cash discounts. The Monopoly States take a cash discount ranging from one-half of 1% to 2%. Under the terms of our price order from the OPA, we can increase our price to take care of such discount, particularly since we are selling at prices less than the maximum ceiling prices permitted under the terms of our order.

2nd: All orders from Monopoly States have a provision that the supplier (which will be us since we will sell to Monopoly States) must guarantee to the State that in the event prices are reduced, the supplier will give credit to the Monopoly State for the amount of such reduction covering whatever merchandise the state has on hand. We would be willing to accept orders on such a basis provided you, in turn, would guarantee such price decline to us.

3rd: Every Monopoly State has either a State Seal or strip stamp to be affixed to each bottle shipped to them. It would be practically impossible and very costly for us to affix such seals or stamps, or to authorize the State to do

Government Exhibit 119-a

so, since they would have to open each case and affix the seals or stamps. This, you realize, is costly. It can be done by you at the time of bottling such orders. Are you prepared to do so without any charge? The stamps and seals would be supplied by the State.

We await your advices in the matter so that we can proceed in the possibility of obtaining such business.

Very truly yours,

R. C. WILLIAMS & Co. INC.

I. A. KOERNER.
I. A. Koerner
Manager-Liquor Department.

IAK:SR

Government Exhibit 119-b

R. C. WILLIAMS & CO. INC.
265 TENTH AVENUE
NEW YORK, N. Y.

August 2nd, 1945.

Agencias Distiladores, S. A.
411 Aguiar
Havana, Cuba.

RE: HARWOOD WHISKEY

Gentlemen:

We believe the time is now propitious for the sales of HARWOOD WHISKEY to Monopoly States. Before going into such business, however, there are several matters we present for your consideration.

1st: The matter of cash discounts. The Monopoly States take a cash discount ranging from one-half of 1% to 2%. Under the terms of our price order from the OPA we can increase our price to take care of such discount, particularly since we are selling at prices less than the maximum ceiling prices permitted under the terms of our order.

2nd: All orders from Monopoly States have a provision that the supplier (which will be us since we will sell to Monopoly States) must guarantee to the State that in the event prices are reduced, the supplier will give credit to the Monopoly State for the amount of such reduction covering whatever merchandise the State has on hand. We would be willing to accept orders on such a basis provided you, in turn, would guarantee such price decline to us.

Government Exhibit 119-b

3rd: Every Monopoly State has either a State Seal or strip stamp to be affixed to each bottle shipped to them. It would be practically impossible and very costly for us to affix such seals or stamps, or to authorize the State to do so, since they would have to open each case and affix the seals or stamps. This, you realize, is costly. It can be done by you at the time of bottling such orders. Are you prepared to do so without any charge? The stamps and seals would be supplied by the State.

We await your advices in the matter so that we can proceed in the possibility of obtaining such business.

Very truly yours,

R. C. Williams & Co. Inc.

STANDARD TIME INDICATED

RECEIVED AT

TELEPHONE YOUR TELEGRAMS TO POSTAL TELEGRAPH

Postal Telegraph

Commercial Cables — Canadian Marconi Telegraphs

THIS IS A FULL RATE TELEGRAM, CABLEGRAM OR RADIOGRAM UNLESS OTHERWISE INDICATED BY SYMBOL IN THE PREAMBLE OR IN THE ADDRESS OF THE MESSAGE. SYMBOLS DESIGNATING SERVICE SELECTED ARE OUTLINED IN THE COMPANY'S TARIFFS ON HAND AT EACH OFFICE AND ON FILE WITH REGULATORY AUTHORITIES.

Form 16A

R NA37 45 NL

CPR VANCOUVER BC 15

IRVING KOERNER

DELIVER

C ILLIAMS AND CO INC 265 - 10TH AVE NEW YORK NY

REFERENCE NINETEEN THOUSAND THREE HUNDRED SIXTY CASES DUNBAR GLASS AS COVERED BY ALPRIN LETTER TO ME OF MAY THIRD COPY WHICH HE INFORMS ME YOU HAVE RECEIVED STOP PLEASE APPLY TO ALCOHOL TAX UNIT FOR PERMIT TO USE SAME FOR HARWOOD KIND REGARDS

H H KLEIN

[redacted]

Government Exhibit 129

91a

Charge to the account of _____ $ _____

CLASS OF SERVICE DESIRED

DOMESTIC		CABLE	
TELEGRAM		ORDINARY	
DAY LETTER		URGENT RATE	
SERIAL		DEFERRED	
NIGHT LETTER		NIGHT LETTER	

Please check class of service desired; otherwise the message will be transmitted as a telegram or ordinary cablegram.

WESTERN UNION

1206

A. N. WILLIAMS, PRESIDENT
NEWCOMB CARLTON, CHAIRMAN OF THE BOARD
J. C. WILLEVER, FIRST VICE-PRESIDENT

CHECK
ACCOUNTING INFORMATION
TIME FILED

Send the following telegram, subject to the terms on back hereof, which are hereby agreed to

MAY 16TH 1944

DISTILLERS AGENCIES INC
411 AGUIAR STREET
HAVANA CUBA

CONFIRMING CABLES AND PURSUANT TO TERMS OF AGREEMENT WE INTEND SELLING SUBJECT TO YOUR APPROVAL THE FOLLOWING WHOLESALE FIRMS AND QUANTITIES

THREE CARS	R C WILLIAMS & CO. INC.	265-10TH AVENUE NEW YORK CITY N Y	5250 CASES
ONE CAR	(STANDARD WINE & LIQUOR	211 WEST 61ST STREET NEW YORK CITY	875 CASES
	(STAR LIQUOR DEALERS	47-42 37TH STREET LONG ISLAND CITY	875 CASES
ONE CAR	EQUITABLE TRADING COMPANY	99 HUDSON STREET NEW YORK CITY	1750 CASES
ONE CAR	FEDERAL WINE & LIQUOR CO	JERSEY CITY, N. J.	1750 CASES
ONE CAR	NATIONAL DIST. CO.	ATLANTA, GA. (AL DAVIS)	1750 CASES
ONE CAR	UNITED IMPORT DIST. CO.	NEW HAVEN, CONN	1750 CASES
ONE CAR	MUTUAL LIQUOR & TOBACCO CO	CHICAGO, ILL	1750 CASES
ONE CAR	U. S. WHOLESALE CO.	INDIANAPOLIS IND.	1750 CASES
	UNITED DISTILLERS OF AMERICA	BALTIMORE, MD.	2500 CASES
		TOTAL	20,000 CASES

Government Exhibit 147

Charge to the account of _____ $ _____

CLASS OF SERVICE DESIRED			
DOMESTIC		CABLE	
TELEGRAM		ORDINARY	
DAY LETTER		URGENT RATE	
SERIAL		DEFERRED	
NIGHT LETTER		NIGHT LETTER	

Patrons should check class of service desired; otherwise the message will be transmitted as a telegram or ordinary cablegram.

WESTERN UNION

1206

CHECK

ACCOUNTING INFORMATION

TIME FILED

A. N. WILLIAMS, PRESIDENT

NEWCOMB CARLTON, CHAIRMAN OF THE BOARD

J. C. WILLEVER, FIRST VICE-PRESIDENT

Send the following telegram, subject to the terms on back hereof, which are hereby agreed to

-8-

WITH YOUR APPROVAL WE PROPOSE TO APPOINT MR. ALBERT ROHR OF NEW YORK CITY AND MR. S. L. COHEN OF CHICAGO TO CONTACT THE WHOLESALE TRADE FOR OUR ACCOUNT. YOUR PROMPT APPROVAL OF ACCOUNTS AND INDIVIDUALS WILL BE GREATLY APPRECIATED SO THAT LETTER OF CREDIT CAN BE IMMEDIATELY OPENED FOR YOUR ACCOUNT.

R. C. WILLIAMS & CO. INC.

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

BY DIRECT WIRE FROM

WESTERN UNION

A. N. WILLIAMS
PRESIDENT

1223

SYMBOLS

DL = Day Letter
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

WU G200 INTL=CD HAVANA CUBA 67 MAY 18 1049A LC

RC WILLIAMS AND CO=

:265 TENTH AVE NYK:

* 200000 Ltr of C.

=YOUR CABLE SUBMITTING WHOLESALE FIRMS IN UNITED STATES WITH A PRESENT ALLOTMENT SET UP FOR THEM TOTALLING TWENTY THOUSAND CASES HARWOOD WHISKEY RECEIVED STOP ACCOUNTS AND QUANTITIES AS WELL AS APPOINTMENT OF ROER AND COHEN ARE APPROVED BY US AND WE THANK YOU FOR YOUR ADVICE STOV YOU MAY ARRANGE LETTER OF CREDIT AS STATED=

205P

AGENCIAS DESTILADORAS SA

Government Exhibit 148

94a

Government Exhibit 153

AGENCIAS DESTILADORAS, S. A.
AGUIAR 411, 50. PISO
TELEFONO M-5687
LA HABANA

September 8, 1944

R. C. Williams & Co. Inc.
265 10th Avenue,
New York City, N. Y.

Attention: Mr. I. A. Koerner,
Manager—Liquor Department

Dear Mr. Koerner:

We are in receipt of your letters addressed to us under date of August 17th and August 23rd, wherein you request approval of Irving Wolf as sales representative for your Company for the sale of Harwood's Canadian Whiskey, for the state of California, and Harold Cohn, as sales representative for your Company, for the sale of Harwood's Canadian Whiskey, for the states of Louisiana, Connecticut, and South Carolina.

In accordance with your request, the appointment of Harold Cohn is approved.

However, with reference to the appointment of Irving Wolf, we understood from you previously that only a certain section of the State of California is to be allocated to one man, and that others were to be appointed for different sections, hence the appointment of Mr. Wolf is limited only to this understanding.

Yours very truly,

AGENCIAS DESTILADORAS, S. A.

F. GURRI

Government Exhibit 250

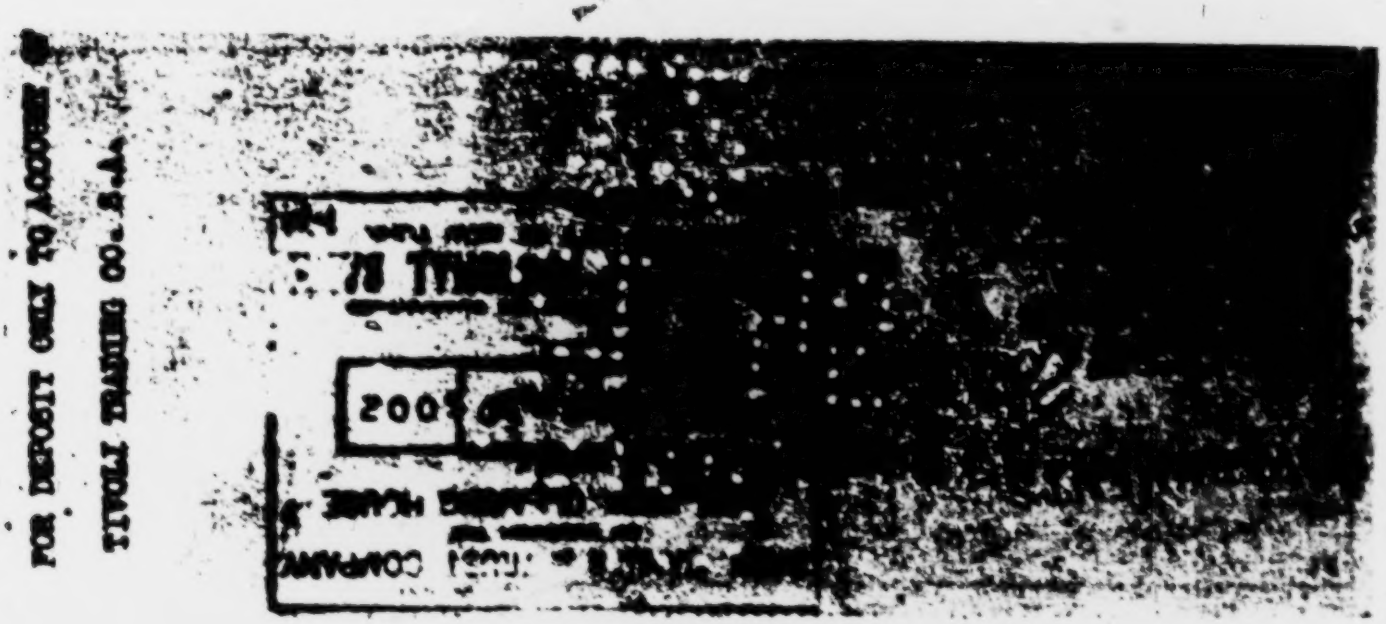
NEW YORK Dec 7 1971 No. 452 14

CHEMICAL BANK & TRUST COMPANY 1-18

NEW YORK
LONDON TERRACE OFFICE
PARK AVENUE AT 33RD STREET

PAY TO THE ORDER OF Tivoli Trading Co. S.A. $500.00

Five Hundred and 00/100 DOLLARS



Government Exhibit 251

Received from the Tivoli Trading Co., S. A.

FIVE HUNDRED DOLLARS ($500.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

I. A. Koerner

FORM 1040
U. S. Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1952

1952

or taxable year beginning ....., 1952, and ending ....., 195

Do not write in these spaces
Serial No. 233013044
(Cashier's Stamp)

Name IRVING & MARIE KOERNER
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)

HOME ADDRESS 24 OLD POND RD.
(PLEASE PRINT. Street and number or rural route)

GREAT NECK (City, town, or post office) LI (Postal zone number) NY (State)

Social Security No. 046-05-3024 Occupation

Your exemptions

1. List your name. If your wife (or husband) had no income, or if this is a joint return, list also her (or his) name.
   A IRVING A. KOERNER
   B MARIE KOERNER
   (Your wife's name—do not list if exemption is claimed on another return)

Check below if at the end of your taxable year you or your wife were—
65 or over ☐ Blind ☐
65 or over ☐ Blind ☐

On lines A and B below—
If neither 65 nor blind write the figure 1
If either 65 or blind write the figure 2
If both 65 and blind write the figure 3

Number of exemptions for you 1
Number of her (or his) exemptions 1

Name and address if different from yours

C. List names of your children (including stepchildren and *legally* adopted children) with 1952 gross incomes of less than $600 who received more than one-half of their support from you in 1952. See Instructions.
Enter number of children listed .....

D. Enter number of exemptions claimed for close relatives listed in Schedule I on page 2 1

E. Enter total number of exemptions claimed in A to D above 3

Your income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1952, *before payroll deductions*. Persons claiming traveling or reimbursed expenses, see Instructions.

Print Employer's Name	Where Employed (City and State)	Total Wages	Income Tax Withheld
Continental Dis. Corp.	1429 Walnut st, Phila.	$ 4500	$ 600.10
Linda Foods Inc.	47 Waverly Ave, Newark	150	16.86
	Enter total →	$ 4650	$ 616.96

3. If you received dividends, interest, or any other income, give details on page 2 and enter the total here 12779.77
4. Add income shown in items 2 and 3, and enter the total here ..... $ 13429.77

How to figure the tax

(Before figuring your tax, see Schedule J for "Head of Household." If you claim such status, check here ☐.)
IF YOUR INCOME WAS LESS THAN $5,000.—Use the tax table on page 4 *unless you itemize deductions*. The table allows about 10 percent of your income for charitable contributions, interest, taxes, medical expenses, etc. If your deductions exceed 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.
IF YOUR INCOME WAS $5,000 OR MORE.—Compute tax on page 3. Use standard deduction or itemize deductions, whichever is to your advantage.

Tax due or refund

5. (A) Enter your tax from table on page 4, or from line 13, page 3 ..... $ 4287.90
   (B) Enter your self-employment tax from line 35, separate Schedule C ..... Enter total here → $ 4287.90
6. How much have you paid on your 1952 income tax?
   (A) By tax withheld (in item 2, above). Attach Original Forms W-2 ..... $ 616.96
   (B) By payments on 1952 Declaration of Estimated Tax (include any overpayment on your 1951 tax not claimed as a refund) 4275.00
   Enter total here → 4891.96
7. If your tax (item 5) is larger than payments (item 6), enter *balance of tax due* here. This balance must be paid in full with return ..... $ 1472.94
8. If your payments (item 6) are larger than your tax (item 5), enter the *overpayment* here ..... $
   Enter amount of item 8 you want $ (Refunded to you) $ (Credited on 1953 estimated tax)

Do you owe any prior year Federal tax for which you have been billed? (Yes or No) no Is your wife (or husband) making a separate return for 1952? (Yes or No) no. If "yes," write her (or his) name .....
If you have filed a return for a prior year, state latest year 1951 Where filed? 1st NY
To which director's (formerly collector's) office did you pay amount claimed in item 6 (B), above? 1st NY

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Vincent B Reuvin 2/26/53
(Signature of person, other than taxpayer, preparing this return) (Date)
Martin Schwarcher & Co.
(Name of firm or employer, if any)

(Signature of taxpayer) (Date)

(Signature of taxpayer's wife or husband if this is a joint return) (Date)

To assure split-income benefits, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN

Please Attach All Original W-2 Forms Here

Government Exhibit 253

Schedule A.—INCOME FROM DIVIDENDS — Page 2

Name of corporation declaring dividend	Amount	Name of corporation declaring dividend	Amount	
A. M. Byers	$ 1000-	Int. Harvester	$ 100-	
Cons. Edison	345-	American Tobacco	225-	
Tobian Royalties	15-			
Nickel Plate Corp.	200-		Enter total here →	$ 1885-

Schedule B.—INCOME FROM INTEREST

Name of payer	Amount	Name of payer	Amount	
Union Cent. Ins. Co	$ 5 39		$	
			Enter total here →	5. 39

Schedule C Summary.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION, FARMING, AND PARTNERSHIP

1. Business profit (or loss) from separate Schedule C, line 23 ..... $
2. Farm profit (or loss) from separate schedule, Form 1040F .....
3. Partnership, etc., profit (or loss) from Form 1065, Schedule K, Column 3 ... _____ (Partnership name) _____ (Address)
4. Total of lines 1, 2, 3 ..... $
5. Less: Net operating loss deduction (attach statement) .....
6. Net profit (or loss) (line 4 less line 5) .....

Schedule D.—NET GAIN OR LOSS FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. From sale or exchange of capital assets (from separate Schedule D) 122996. 68
2. From sale or exchange of property other than capital assets (from separate Schedule D) .....

Schedule E.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (amount you paid) $
2. Cost received tax-free in past years
3. Remainder of cost (line 1 less line 2) $
4. Amount received this year $
5. Excess of line 4 over line 3
6. Enter line 5, or 3 percent of line 1, whichever is greater (but not more than line 4)

Schedule F.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule H)	4. Repairs (attach statement)	5. Other expenses (attach statement)
	$	$	$	$
1. Totals	$	$	$	$

2. Net profit (or loss) (column 2 less sum of columns 3, 4, and 5) .....

Schedule G.—INCOME FROM ESTATES AND TRUSTS AND OTHER SOURCES

1. Estate or trust (Name) Good Petroleum, 1712.45 less 27½% depletion (Address) 892.70
2. Other sources (state nature) & less expenses of $348.83

Total income (or loss) from above sources (Enter here and as item 3, page 1) ..... $ 125779.77

Schedule H.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE F

1. Kind of property (If buildings, state material of which constructed) Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed (or allowable) in prior years	5. Remaining cost or other basis to be recovered	6. Life used in computing depreciation	7. Estimated life from beginning of year	8. Depreciation allowable this year
		$	$	$			$

Schedule I.—EXEMPTIONS FOR CLOSE RELATIVES—(See Instructions)

1. Name of dependent relative. Also give address if different from yours	2. Relationship	3. Did dependent during 1952— (a) Have gross income of $600 or more?	(b) Reside in your home?	(c) Receive entire support from you?	4. If answer is either 3(b) or 3(c) is "No" enter amount spent for dependent's support in 1952 by— You (and your wife if this is a joint return)	Others, and by dependent from own funds
Laura Loerner	mother	no	no	yes	$ 1500-	$

Enter here and as item 1D, page 1, the number of close relatives claimed above 1

Schedule J.—HEAD OF HOUSEHOLD (See Instructions)
(Not applicable where wife or husband died during taxable year)

1. Were you unmarried (or legally separated) at the close of your taxable year? (Yes or No) .....
2. Did any person for whom you are entitled to an exemption, or your unmarried child, grandchild, or stepchild, even though not a dependent, share during your entire taxable year your home which was your principal residence? (Yes or No) .....
   Give name(s) and relationship to you .....
3. Did you furnish more than one half of the cost of maintaining the household during the taxable year? (Yes or No) .....
   If you did not furnish the entire cost, state total amount furnished by you $.....; by all others (including those sharing your home) $.....
4. If all of the above questions are answered "Yes," you may determine your tax as Head of a Household.

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ITEMIZED DEDUCTIONS—FOR PERSONS NOT USING TAX TABLE ON PAGE 4 OR STANDARD DEDUCTION ON LINE 2 BELOW— Page 3

If Husband and Wife (Not Legally Separated) File Separate Returns and One Itemizes Deductions, the Other Must Also Itemize

Contributions	See Schedule		
	Allowable Contributions (not in excess of 20 percent of item 4, page 1)		$ 1265.
Interest			
	Total Interest		
Taxes	Real Estate Tax on home	$ 591.44	
	Auto license	22.75	
	Sales & Gas Tax	115.00	
	NY State Income Tax	322.61	
	Total Taxes		1051.80
Losses from fire, storm, or other casualty, or theft			
	Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses *(if over 65 see Instructions)*			
	Net Expenses (not compensated by insurance or otherwise)		
	Enter 5 percent of item 4, page 1, and subtract from Net Expenses		
	Allowable Medical and Dental Expenses. See Instructions for limitation		
Miscellaneous *(See Instructions)*	Deposit on Real Est-abandoned(Jos.Rosenthal)	100.	
	Safe Deposit box	33.60	
	Deductible business exp.	1097.93	
	Total Miscellaneous Deductions		1231.53
	Total Deductions		$ 4146.33

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1.	Enter amount shown in item 4, page 1. This is your Adjusted Gross Income	$ 130429.27
2.	If deductions are itemized above, enter total of such deductions. If deductions are not itemized *and line 1, above, is $5,000 or more:* (*a*) married persons filing separately enter $500, (*b*) all others enter 10 percent of line 1, but not more than $1,000	4146.33
3.	Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 126283.44
4.	Multiply $600 by total number of exemptions claimed in item 1E, page 1. Enter total here	1800-
5.	Subtract line 4 from line 3. Enter difference here. (If line 1 includes partially tax-exempt interest, see Instructions)	$ 124483.44
	If line 5 is not more than $2,000 ——	
6.	Enter 22.2 percent of amount shown on line 5 and disregard lines 7, 8, and 9	$
	If line 5 is more than $2,000 ——	
7.	**And you are a single person, a married person filing separately, or a head of household ——** Single persons and married persons filing separately use Tax Rate Schedule I on page 12 of Instructions to figure tax on amount on line 5; heads of household use Tax Rate Schedule II	$
8.	**And you are filing a joint return ——** (*a*) Enter one-half of amount on line 5 — $ 62240.72	
	(*b*) Use Tax Rate Schedule I on page 12 of Instructions to figure tax on amount on line 8 (*a*) — 30408.56	
	(*c*) Multiply amount on line 8 (*b*) by 2	$ 60817.12
9.	If alternative tax computation is made, enter here tax from separate Schedule D	$ 64207.20
	Disregard lines 10, 11, and 12, and copy on line 13 the same figure you entered on line 6, 7, 8 (*c*), or 9, unless you used itemized deductions	
10.	Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116) — $	
11.	Enter here any income tax paid at source on tax-free covenant bond interest	
12.	Add the figures on lines 10 and 11 and enter the total here	$
13.	Subtract line 12 from line 6, 7, 8 (*c*), or 9. Enter difference here and as item 5 (A), page 1	$ 64207.20

Government Exhibit 253

SCHEDULE D (Form 1040) — GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY — 1952

For Calendar Year 1952 or taxable year beginning , 1952, ending , 195

Name: IRVING & MARIE ROSENBERGER

(a) CAPITAL ASSETS

1. Kind of property and description	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price	5. Depreciation allowed (or allowable) since acquisition	6. Cost or other basis and cost of subsequent improvements	7. Expense of sale	8. Gain or loss (Column 4 plus Column 5 less sum of Columns 6 and 7)
SHORT TERM CAPITAL GAINS OR LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS							
1 AT&T,1964Debentures	7/1/52	11/26/52	12202.08		11575-		627.08
Michael Todd,baddebt							(12800-)
2. Enter your share of net short-term gain or loss from partnerships and fiduciaries							
3. Enter unused capital loss carry-over from 5 preceding taxable years (attach statement)							(3796.03)
4. Total of short-term gains and losses (add lines 1 and 2, and long-term gains and losses shown above)							(15968.95)
LONG TERM CAPITAL GAINS OR LOSSES—ASSETS HELD MORE THAN 6 MONTHS							
5							

see schedule attached

6. Enter the full amount of your share of net long-term gain or loss from partnerships and fiduciaries
7. Enter sum of long-term gains or losses and short-term gains and losses shown above $261962.31

	(a) Gain	(b) Loss
8. Enter net short-term gain or loss from line 4	$	(15968.95)
9. Enter net long-term gain or loss from line 7	261962.31	$
Use lines 10 through 13 only if gains exceed losses in lines 8 and 9.		
10. Enter short-term gain (line 8, col. a) reduced by any long-term loss (line 9, col. b)	$	x x x x
11. Enter long-term gain (line 9, col. a) reduced by any short-term loss (line 8, col. b)	245993.36	x x x x
12. Enter 50 percent of line 11	122996.68	x x x x
13. Enter here and on line 1, Schedule D, page 2, Form 1040, the sum of lines 10 and 12	122996.68	x x x x
Use lines 14 and 15 only if losses exceed gains in lines 8 and 9.		
14. Enter the excess of losses over gains on lines 8 and 9	x x x x	$
15. Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (a) the amount on line 14, (b) net income computed without regard to capital gains and losses, or (c) $1,000	x x x x	$

COMPUTATION OF ALTERNATIVE TAX

Use only if you had a net long term capital gain or an excess of net long term capital gain over net short term capital loss and line 5 or 8(c), page 2, Form 1040, exceeds $1,000

16. Enter from page 3, Form 1040, the income from line 5 (if separate return) or line 8 (a) (if joint return)	$ 62240.72
17. Enter amount from line 12, col. a, if separate return or half of such amount if joint return	61498.34
18. Balance (line 16 less line 17)	$ 742.38
19. Enter tax on amount on line 18 (use appropriate Tax Rate Schedule in Form 1040 Instructions)	$ 164.61
20. If joint return, multiply amount on line 19 by two	$ 329.62
21. Enter 52 percent of amount on line 17	$ 31979.14
22. If joint return, multiply amount on line 21 by two	$ 63958.28
23. Alternative tax (line 19 plus line 21 if separate return, line 20 plus line 22 if joint return)	$ 64287.90
24. Enter tax from page 3, Form 1040 (either line 7, or line 8 (c), whichever is applicable)	$ 76817.16
25. Tax liability (line 23 or 24, whichever is smaller) Enter here and also on line 9, page 3, Form 1040	$ 64287.90

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired (Mo. Day Year)	3. Date sold (Mo. Day Year)	4. Gross sales price (contract price)	5. Depreciation allowed (or allowable) since acquisition (if sold or exchanged, attach schedule)	6. Cost or other basis and cost of subsequent improvements (if not purchased, attach explanation)	7. Expense of sale	8. Gain or loss (Column 4 plus Column 5 less sum of Columns 6 and 7)
1.			$	$	$	$	$

2. Enter here the sum of gains or losses or difference between gains and losses shown above. Also enter on line 2, Schedule D, page 2, Form 1040 $

Government Exhibit 253

IRVING A. AND MARIE KOERNER

1952

CAPITAL GAINS AND LOSSES - LONG TERM

	Date Purchased	Date Sold	Sales Price	Cost	Expense Of Sale	Gain Or Loss
Tivoli Corp.	1945	3/12/52	$264,162.70	$ 500.00	$3,000.00	$261,112.70
American Tobacco	4/14/52	12/ 3/52	6,436.89	5,856.83		580.06
Cons. Edison	4/14/52	11/20/52	7,646.22	6,904.26		741.96
Midland Petroleum Ltd.	1947	April-June 1952	3,014.14	2,837.43		176.7
Tohlan Royalties	4/ 9/52	11/20/52	852.88	1,502.00		649.1
				Total Gain		$261,962.3

Contributions:

Infantile Paralysis	$ 10.00
American Fund for Israel Insti.	25.00
United Jewish Appeal	1,100.00
U.S.O. Defense Fund	5.00
Catholic Church of Great Neck	125.00
	$1,265.00

Travel and Entertainment Expenses-Not Reimbursed:

Club Expenses	$1,659.86
Telephone	14.62
Other Entertainment Expenses	23.45
	$1,697.93

Government Exhibit 253

Government Exhibit 254

CABLE ADDRESS
"ALPRIN"

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 BROADWAY
General Motors Building
New York 19, N. Y.

CIRCLE 5-8070

May 6, 1954.

Thomas W. Hill, Esq.
Assistant U. S. Attorney
U. S. Attorney—Southern District of N. Y.
U. S. Courthouse—Foley Square
New York, 7, N. Y.

Dear Mr. Hill:

In accordance with our arrangement today, I am enclosing herewith photostatic copies of my letters dated April 17, 1944 and April 19, 1944 addressed to Mr. H. H. Klein, Baltimore, Maryland.

Respectfully,

MORRIS O. ALPRIN

MOA:MF
Enc. 2.

Government Exhibit 254

SPECIAL DELIVERY

April 17, 1944.

Mr. H. H. Klein
3610 Clarinth Road
Baltimore, Md.

Re: Distillers Agency, Inc.
(Duncan Harwood) with
R. C. Williams Co.

Dear Mr. Klein:

Confirming our telephone conversation today, I am enclosing herewith the opinion of Haas, Schlesinger & Mayers Certified Public Accountants, for your information and file.

I discussed this opinion in detail with Mr. Jules Jacobs and we both were very pleased with it.

I call your attention particularly to the similar case of Ronrico Corporation with McKesson & Robbins (page 3 of opinion).

I have arranged with Mr. Jacobs to follow the suggestions in the opinion, as follows:

1. Mr. Jacobs will prepare the contract (changed in accordance with opinion and pursuant to conference with me today) and have the same signed by R. C. Williams and forwarded by airmail special delivery to Distillers Agency, Inc. in Havana.

2. Mr. Jacobs will prepare the supplementary letter with reference to the sixty cent commission, the approval of

Government Exhibit 254

the wholesale accounts, etc. which will be outside of the agreement and covered by the special letter.

3. Mr. Jacobs will prepare a special letter wherein R. C. Williams will order 100,000 cases pursuant to the terms of the contract after the contract is signed in Havana.

You will note the procedure will be that all notices will go directly to Cuba, but that you will receive copies. You can, by telephone or cable, confer with the people in Havana, so that they can issue approval or disapproval of the matter submitted to them by R. C. Williams.

I believe this carries out the situation very well. I presume that Cuba has the necessary stationery, invoices, etc. to carry on its business.

If I get the opportunity, I will telephone you from Washington tomorrow and possibly arrange to be with you in Baltimore in the late afternoon or evening.

Sincerely,

MOA:MF
Enc. 1.

Government Exhibit 254.

April 19, 1944.

Mr. H. H. Klein
3610 Clarinth Road
Baltimore, Maryland

Re: Distillers Agency
(Duncan Harwood & Co. Ltd.)
with R. C. Williams & Co. Inc.

Dear Mr. Klein:

Confirming our telephone conversation today regarding the above entitled matter and my conversation with Jules Jacobs, Esq., attorney for R. C. Williams, the following is the procedure in the matter:

1. Mr. Jacobs is sending to you a copy of the agreement, with supplemental agreement and the order for 100,000 cases, which please read carefully and telephone me with respect to any comments or suggestions concerning the same.

2. After you have read and approved these papers, please telephone me so that I can advise Mr. Jacobs to send two copies of all instruments to Cuba to be signed by an officer of the corporation in Cuba. One copy of all instruments will be retained by the Cuban Corporation and the duplicate copies properly signed and executed will be returned to R. C. Williams & Co.

3. When the Cuban Corporation signs and executes all papers, they are to send cable to R. C. Williams advising them that the papers have been executed and are being

returned to R. C. Williams. Upon receipt of such cable and sometime around May 8, 1944, R. C. Williams will open letter of credit for $200,000 required by the agreement.

4. Before R. C. Williams employs any brokers or sales agents, it will send notices to Cuba in writing, with copy of such notices to you in order to get written approval from Cuba of the employment of such persons. When you receive a copy of the notice, you can telephone or cable to Cuba conferring with them relative to approval of such employment.

5. Similarly, before R. C. Williams makes any sales to other wholesalers, they will send notice to Cuba with a copy of such notice to you, giving the name and address of the proposed customer and the quantity to be sold to such customer in order to obtain written approval from Cuba. All of such written approvals can be by cable. As set forth in the preceding paragraph, you can confer with Cuba by phone or cable with reference to any advice on this matter.

These items will take care of the contract and the initial order for 100,000 cases in proper form.

After letter of credit is opened, and the Canadian Company is ready to make shipment, I would suggest the following course of procedure.

1. The Cuban Company to cable, or write, to the Canadian Company giving instructions with reference to shipments to R. C. Williams.

Government Exhibit 254

2. When shipments are made by the Canadian Company, the bill of lading should read "Shipper DUNCAN HARWOOD & Co. LTD. for account of AGENCIAS DISTILADORES, S. A." and the goods shipped to the order of XYZ National Bank, notifying R. C. Williams (or the name of the wholesale customer, where Williams makes sales to other wholesalers).

3. The Canadian Company to send all shipping documents (bill of lading and Consular invoice) to you, and the Cuban Company, or you to make up the commercial invoice and three days sight draft which should be attached to the shipping documents and presented to the bank where the letter of credit is established.

4. Please make sure the Consular invoice shows the shipper as DUNCAN HARWOOD & Co. LTD. for the account of AGENCIAS DISTILADORES, S. A. The Consular invoice need not reflect the sales price from AGENCIAS DISTILADORES, S. A. to R. C. Williams.

5. In order for the Cuban Corporation to open a bank account in New York or in the United States and deposit the proceeds of the sales to Williams in such bank account, it will be necessary to obtain and prepare the corporate resolutions, signature cards, etc. required by such bank.

6. Out of the proceeds of the sale to R. C. Williams, I presume the Cuban Corporation will remit to the Canadian Corporation the price of the merchandise which the Cuban Corporation pays to the Canadian Corporation. For this purpose, I would suggest that the Canadian Corporation make out its regular commercial

invoice to the Cuban Corporation. The balance, after paying for the merchandise, should be remitted to the Cuban Corporation in order to conform with Cuban laws.

I would urge that other than your supervisory and advisory capacity, you make sure you take no active participation in sales to wholesale customers, or any other activities so that the New York or Federal tax authorities might construe the Cuban Corporation is doing business in the United States.

All correspondence, instructions, notices, etc. should be done in writing by letter or cable between R. C. Williams and the Cuban Corporation.

Similarly, all transactions between the Cuban Corporation and the Canadian Corporation should be by letter or cable and careful record and file kept of all such correspondence, cables, activities, etc.

Further, I would suggest that a transcript of all financial transactions be sent to Cuba so that the Cuban Corporation can keep and maintain its books of account in Cuba and report all its transactions there.

The Cuban Corporation may authorize you to withdraw part of the funds in its account in the U. S. to cover your traveling expenses to Canada and any other miscellaneous expenses so long as you make sure you do not participate in any business or transact any business in the United States for the tax reasons hereinabove set forth.

After the Cuban Corporation has signed and executed the contract, I would suggest they send a covering letter to

Government Exhibit 254

R. C. Williams to the general effect they are pleased and happy to conclude the arrangements with R. C. Williams and enclose signed and executed contract between the parties. They should also send another letter acknowledging receipt of the order for 100,000 cases in accordance with the terms of the contract, thanking them for the business, etc. etc. They should further send a third letter confirming the supplemental agreement which is not included in the original contract.

I would suggest that you keep a record of all your telephone calls to Cuba, memorandum regarding the nature of the conversation, etc. One copy of this record and memorandum should be retained by you and one copy of which should be sent to Cuba for their records.

This outlines the general procedure with respect to the transactions, but if you have any questions with respect to same, so that you can discuss it with your Cuban principals, will you please telephone or write me so that we can clear all details before transactions actually commence.

With personal regards,

Sincerely,

MOA:MF

Government Exhibit 261

SUMMARY OF CONSULAR INVOICES ACCOMPANYING HARWOOD SHIPMENT BY CATEGORIES:

1.	(Seller)	United Distillers, Ltd.
	(Purchaser)	R. C. Williams Co. Inc.
	(Acct. of)	Agencias Destiladores, S. A.
2.	(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Ltd.
	(Purchaser)	R. C. Williams & Co., Inc.
	(Acct. of)	Agencias Destiladores, S. A.
3.	(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Ltd.
	(Purchaser)	R. C. Williams & Co., Inc.
	(Acct. of)	Agencias Destiladores, S. A.
4.	(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Ltd.
	(Purchaser)	R. C. Williams & Co., Inc.
	(Acct. of)	Compania Ramsey Scott Exportadores, S. A.
5.	(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Inc.
	(Purchaser)	R. C. Williams & Co., Inc.
	(Acct. of)	Compania Ramsey Scott Exportadores, S. A.

Government Exhibit 261-a

CONSULAR INVOICES JUNE 21, 1944 SHOWING SHIPMENT OF 1600 CASES OF HARWOOD'S

(Seller)	United Distillers, Ltd.
(Purchaser)	R. C. Williams & Co., Inc.
(Acct. of)	Agencias Destiladores, S. A.

Government Exhibit 261-b

CONSULAR INVOICE SEPTEMBER 12, 1944 SHOWING SHIPMENT OF 1750 CASES OF HARWOOD'S

(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Ltd.
(Purchaser)	R. C. Williams & Co., Inc.
(Acct. of)	Agencias Destiladores, S. A.

Government Exhibit 261-c

CONSULAR INVOICE OF FEBRUARY 3, 1945 SHOWING SHIPMENT OF 1750 CASES OF HARWOOD'S

(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Ltd.
(Purchaser)	R. C. Williams & Co., Inc.
(Acct. of)	Agencias Destiladores, S. A.

Government Exhibit 261-d

CONSULAR INVOICE FEBRUARY 4, 1946 SHOWING SHIPMENT OF 1750 CASES HARWOOD'S

(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Ltd.
(Purchaser)	R. C. Williams & Co., Inc.
(Acct. of)	Compania Ramsey Scott Exportadores, S. A.

Government Exhibit 261-e

CONSULAR INVOICE NOVEMBER 5, 1945 SHOWING SHIPMENT OF 1750 CASES OF HARWOOD'S

(Seller)	United Distillers, Ltd. for Duncan Harwood & Co., Ltd.
(Purchaser)	R. C. Williams & Co., Inc.
(Acct. of)	Agencias Destiladores, S. A.

Government Exhibit 261-f

CONSULAR INVOICE OF JULY 4, 1946 SHOWING SHIPMENT OF 1,000 CASES OF HARWOOD WHISKEY

(Seller)	United Distillers, Ltd., for Duncan Harwood & Co., Ltd.
(Purchaser)	R. C. Williams & Co., Inc.
(Acct. of)	Compania Ramsey Scott Exportadores, S. A.

Government Exhibit 262

SUMMARY OF CONSULAR INVOICES ACCOMPANYING AULD MALCOLM SHIPMENTS

1. (Seller) United Distillers, Ltd. for Peter Malcolm & Co. Ltd.
   (Purchaser) F. Strauss & Son of New Orleans
   (Acct. of) Kent Exporters, Inc.
   (Entered by) H. Harvey Co., Baltimore, Md.
2. (Seller) United Distillers, Ltd. for Peter Malcolm & Co. Ltd.

Government Exhibit 269

	(Purchaser)	Pioneer Atlas Liquor Co. Chicago
	(Acct. of)	Kent Exporters
	(Entered by)	H. Harvey Co., Baltimore
3.	(Seller)	United Distillers, Ltd. for Peter Malcolm & Co. Ltd.
	(Purchaser)	H. Harvey Co. Ltd.
	(Acct. of)	Kent Exporters, Inc.
4.	(Seller)	United Distillers, Ltd. for Peter Malcolm & Co. Ltd.
	(Purchaser)	H. Harvey Co. Ltd.
	(Acct. of)	Kent Exporters, Inc.

Government Exhibit 263

CONSULAR INVOICES ACCOMPANYING DUNBAR'S WHISKEY SHIPMENTS

(Seller)	United Distillers, Ltd. for John Dunbar & Co., Ltd.
(Purchaser)	H. Harvey Co. Ltd.
(Acct. of)	Kent Exporters, Inc.

Government Exhibit 269

Government Exhibit 269 is contained in Exhibit 340 and is a photostat of Draft Drawn on the Royal Bank of Canada, March 27, 1947, to the Order of La Economica Agencias, S. A. for $264,162.70, Endorsed to the Order of Irving Koerner by Morris Alprin and by Koerner for Deposit.

Government Exhibit 270

SECRETARY'S CERTIFICATE OF RESOLUTION

* * * * *

The undersigned, Secretary of ECONOMICA AGENCIAS, S. A., a Cuban corporation, do hereby certify that the following Resolution was adopted at a meeting of the Board of Directors of said corporation held in New York City, New York, on the 7th day of March, 1952, at which a quorum was present and unanimously adopted by the said Board of Directors, as follows:

"RESOLVED, that check No. 186200 issued by the Royal Bank of Canada dated March 27, 1947 in the sum of $264,162.70 to the order of ECONOMICA AGENCIAS, S. A., not being the property of or moneys due to the corporation but the property of IRVING KOERNER, the officers of the corporation are directed and empowered to endorse the name ECONOMICA AGENCIAS, S. A. on the said check to the order of IRVING KOERNER and make it payable to him, and to do everything necessary and proper for the corporation to effectuate this transfer, and to deliver the check so endorsed to IRVING KOERNER or his attorney against receipt and release therefor."

Dated: March 7, 1952.

SADIE F. ALPRIN
Secretary.

Government Exhibit 271-a

Translation of Certificate Showing that La Economica Agencias was organized June 29, 1946.

Government Exhibit 271-b

Translation of Certificate Showing that La Importadora Marte, S. A., was organized June 29, 1946.

Government Exhibit 271-c

Translation of Certificate Showing the organization of El Aguila Exportadora June 29, 1946.

Government Exhibit 271-d

Translation of Certificate showing the organization of Compania Comercial, S. A. on June 29, 1946.

Government Exhibit 272

Translation of Certificate showing the organization of Compania Exportadora Fernandina, S. A., on June 29, 1946.

Government Exhibit 286

GOVERNMENT'S

EXHIBIT

U. S. Dist. Court
S. D. of N. Y.
MAY 26 1955

Cameron Stuart Co Ltd SA

Royal Bank of Canada N.Y.

[illegible] Demand pay to the order of

THE ROYAL BANK OF CANADA $769,850.00

SEVEN HUNDRED SIXTY NINE THOUSAND EIGHT HUNDRED FIFTY & 00/100 Mas

CAMERON, STUART CO. LTD. S. A.

The Royal Bank of Canada.

NEW YORK

President

[illegible] 106 PANAMA, R. P. September 6, 1946

[illegible] Demand pay to the order of

THE ROYAL BANK OF CANADA $654,996.56

SIX HUNDRED FIFTY FOUR THOUSAND NINE HUNDRED NINETY SIX & 56/100 Mas

CAMERON, STUART CO. LTD. S. A.

The Royal Bank of Canada

President

[illegible] 105 PANAMA, R. P. September 6, 1946

[illegible] Demand pay to the order of

THE ROYAL BANK OF CANADA $645,325.00

SIX HUNDRED FORTY FIVE THOUSAND THREE HUNDRED TWENTY FIVE & 00/100 Mas

CAMERON, STUART CO. LTD. S. A.

The Royal Bank of Canada.

President

[illegible] PANAMA, R. P. September [illegible]

Government Exhibit 287

GOVERNMENT'S

EXHIBIT 287

U. S. Dist Court
S. D. of N. Y.
MAY 26 1955

Cameron Stuart Co Ltd S.A.

The Royal Bank of Canada Mont Que.

Montreal Que. September 28, 1946

The Royal Bank of Canada

1/1

MONTREAL BRANCH

Pay [illegible] CONTINENTAL, S. A. Per Order $3,000,000.00

THREE MILLION AND 00/100 Dollars

CAMERON, STUART CO., LTD. S. A.

U. S. Dollars Acct.

[illegible] President

Government Exhibit 288

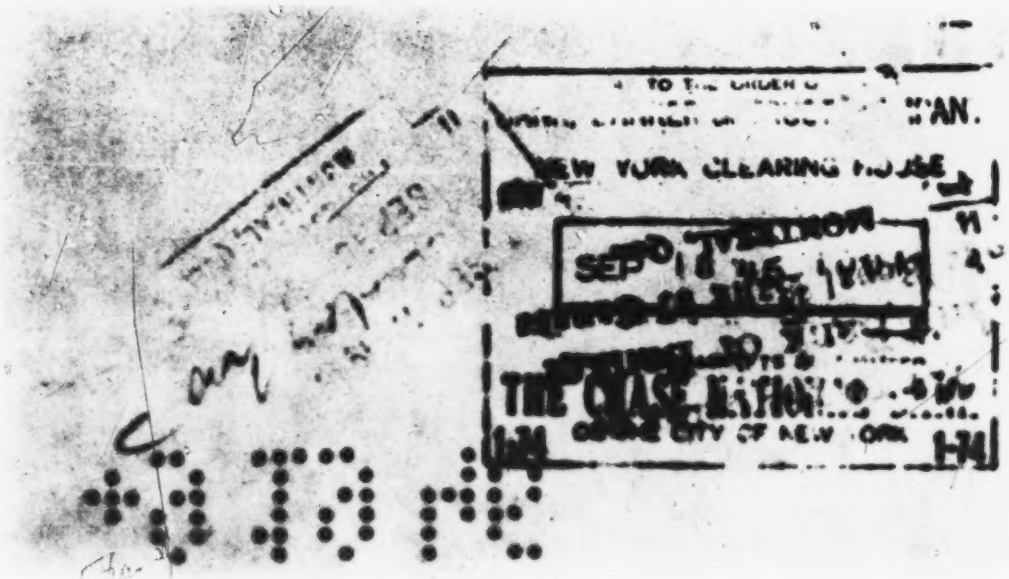
GOVERNMENT'S
EXHIBIT 288
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1955

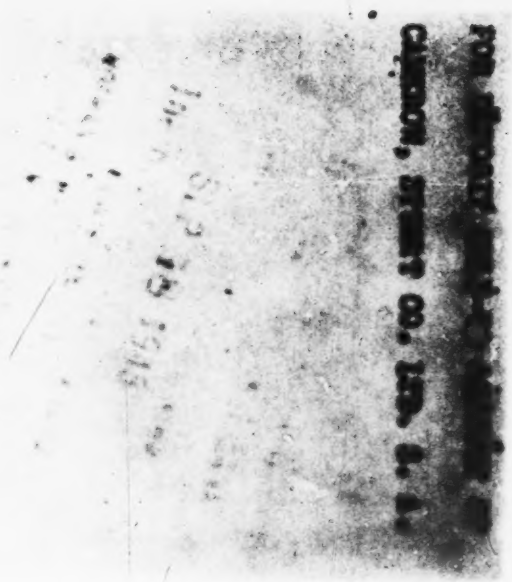
Cameron Stuart Co Ltd 57

The Chase National Bank - New York

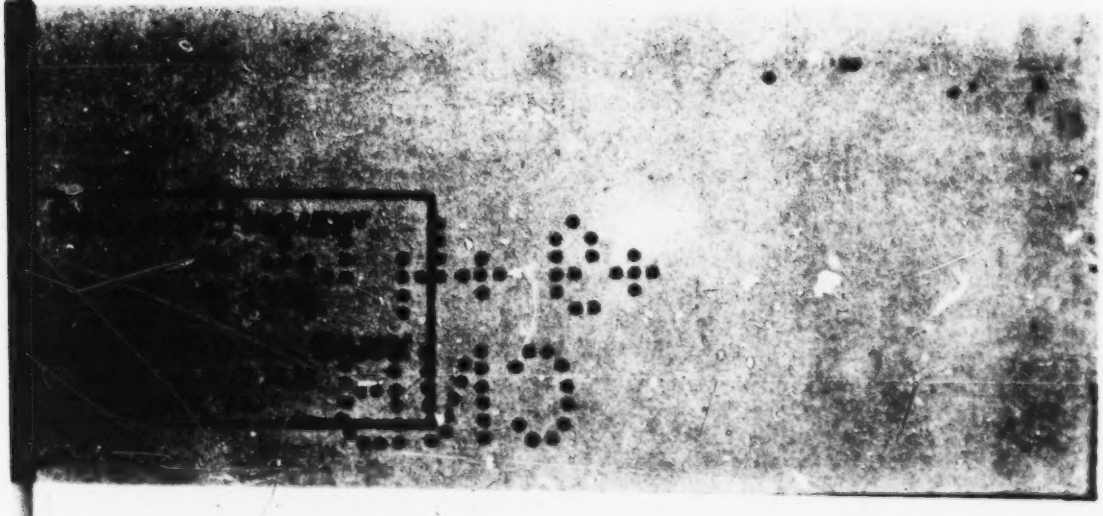
Government Exhibit 288

Government Exhibit 288





Government Exhibit 288



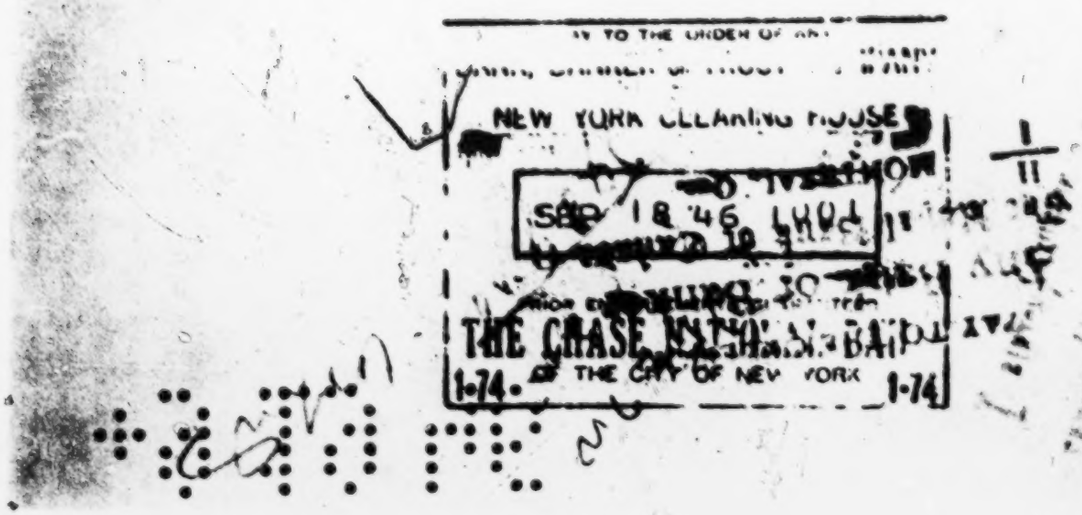
Government Exhibit 288

3561358 New York, September 5, 1946 $52,700.00

The Chase National Bank
OF THE CITY OF NEW YORK

PAY TO THE ORDER OF FIFTY TWO THOUSAND SEVEN HUNDRED & 00/100 Dollars

CAMERON, STUART CO. LTD. S. A.



FOR DEPOSIT ONLY TO ACCOUNT OF
CAMERON, STUART CO. LTD. S. A.

Government Exhibit 290

Exportadora de la Costa S.A.

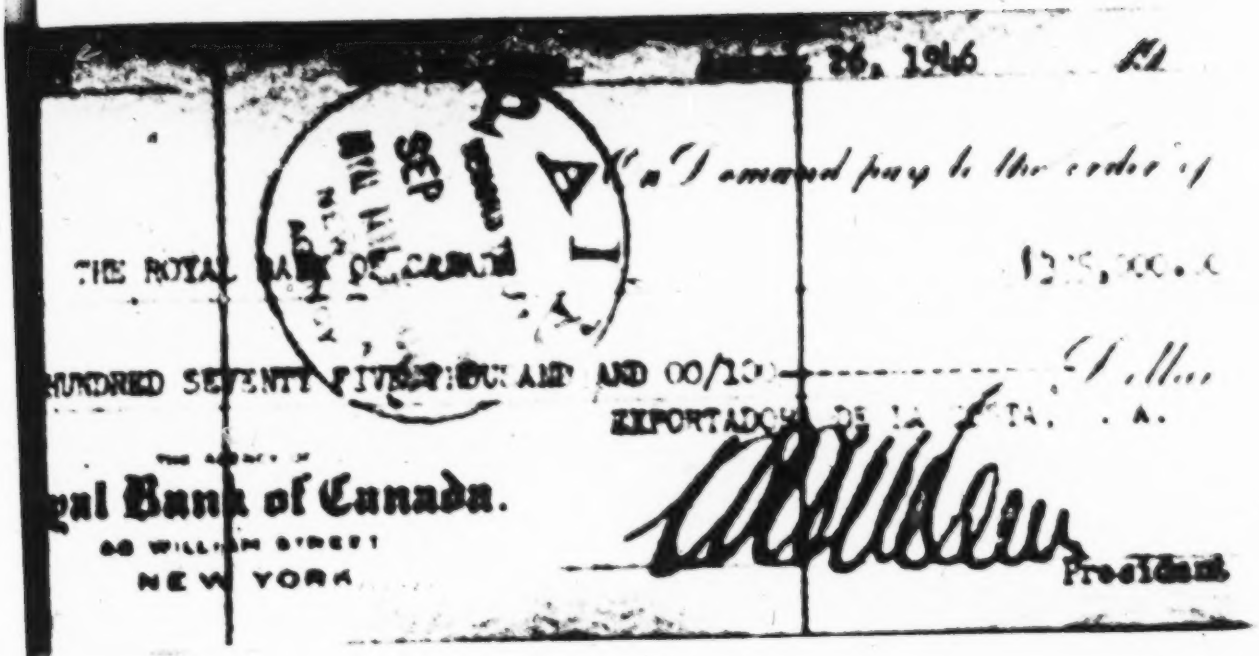
The Royal Bank of Canada N.Y. N.Y.

GOVERNMENT'S

EXHIBIT

U.S. Dist. Court
S.D. of N.Y.
MAY 27 1955

Government Exhibit 290



26, 1946

On Demand pay to the order of

THE ROYAL BANK OF CANADA $225,000.00

HUNDRED SEVENTY FIVE THOUSAND AND 00/100 Dollars

EXPORTADORA DE LA COSTA, S. A.

THE AGENCY OF

Royal Bank of Canada.

60 WILLIAM STREET

NEW YORK

President

HABANA, CUBA. September 26, 1946

EXPORTADORA DE LA COSTA, S. A.

EN THOUSAND FOUR HUNDRED SEVENTY SIX AND 13/100

EXPORTADORA DE LA COSTA, S. A.

Royal Bank of Canada.

60 WILLIAM STREET

NEW YORK

President

Government Exhibit 302

GOVERNMENT'S

302

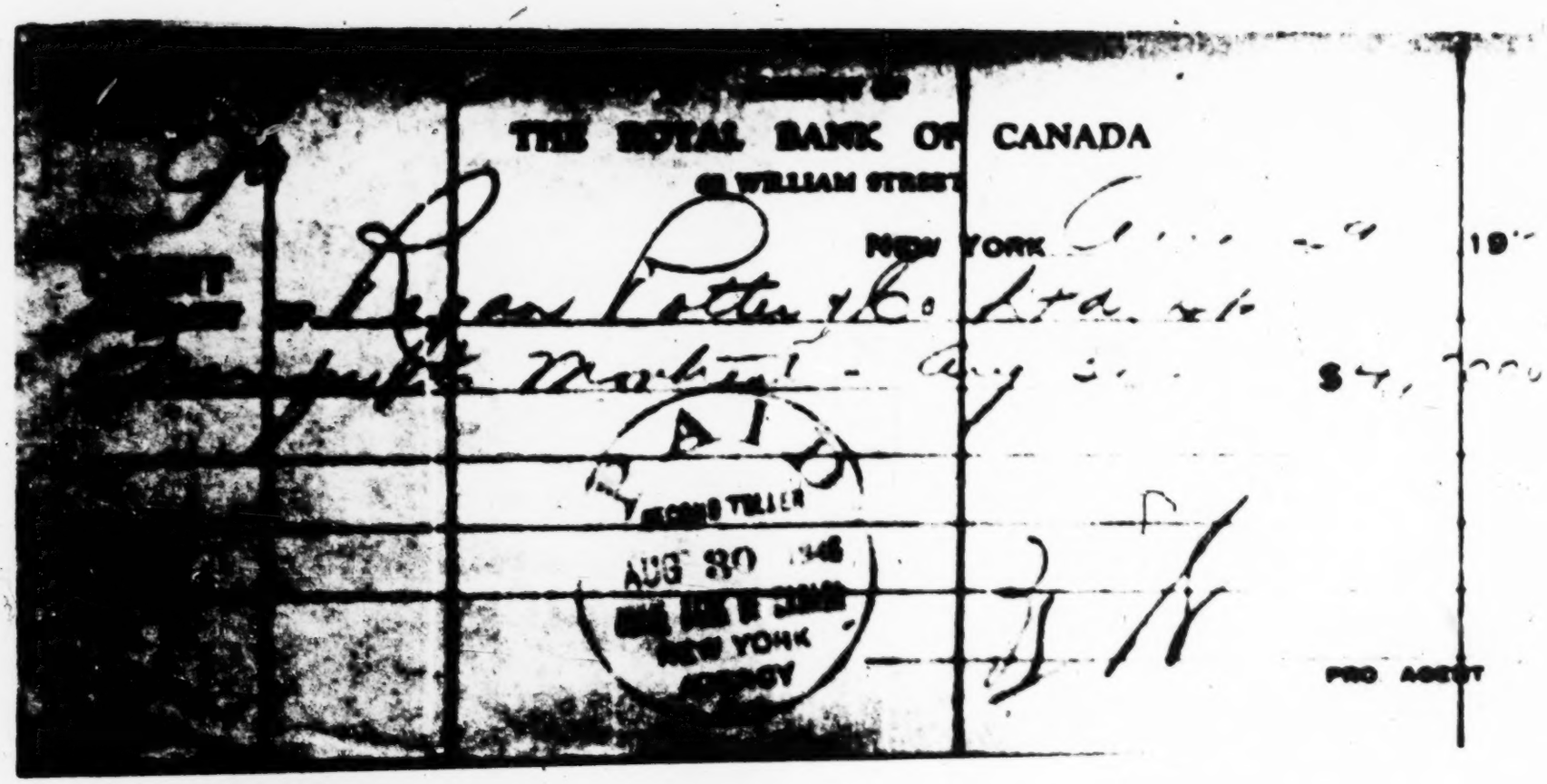
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1965

REGAN Potter & Company Ltd S.A.

The Royal Bank of Canada

New York N.Y.

Government Exhibit 302



THE ROYAL BANK OF CANADA
68 WILLIAM STREET
NEW YORK

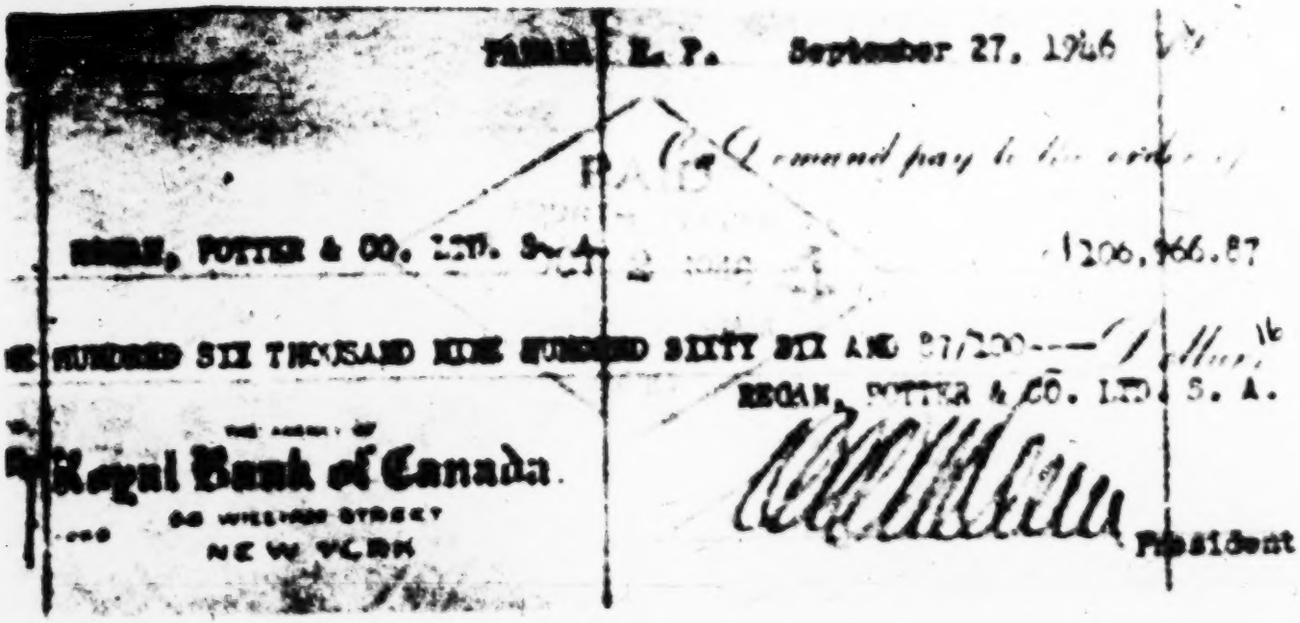
19

Regan Potter & Co. Ltd. S.A.

$4,

PAID
SECOND TELLER
AUG 30 1946
NEW YORK
AGENCY

PRO AGENT



PANAMA, R. P. September 27, 1946

Ca Demand pay to the order of

REGAN, POTTER & CO. LTD. S.A. $206,966.87

THE HUNDRED SIX THOUSAND NINE HUNDRED SIXTY SIX AND 87/100 — Dollars

REGAN, POTTER & CO. LTD. S. A.

THE AGENCY OF
Royal Bank of Canada
68 WILLIAM STREET
NEW YORK

President

Government Exhibit 303

GOVERNMENT'S

EXHIBIT 303
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1955

Regan Potter & Co Ltd SA.

The Royal Bank of Canada, N.Y.

Securities File. (Bonds)

September 12, 1946

Royal Bank of Canada,
68 William Street,
New York City, N.Y.

Dear Sirs:

Please transfer all Dominion of Canada, 1-3/4% Bonds, Series 1949 and/or 1950, which you are holding in safekeeping for our account, to your Montreal Branch for the same purpose, i.e., safekeeping.

Yours very truly,

REGAN, POTTER & CO. LTD. S. A.

President

Government Exhibit 303

Government Exhibit 303

FORM B-3M
THE ROYAL BANK OF CANADA, NEW YORK)

SAFEKEEPING

CARD No 1 REGISTER

ON ACCOUNT OF	DESCRIPTION OF SECURITY	COUPONS DUE
REGAN POTTER & CO., LTD., S.A.	CANADA, DOMINION OF Eighth Victory Loan Bonds Series "P4" Dated: May 1st, 1945 RATE 1-3/4% MATURITY November 1st, 1949	M 1 / N 1 CURRENCY Canadian

INSTRUCTIONS

The coupons from these securities, as and when they become due, are to be forwarded to Montreal Branch for credit to their account.
(Registration ctfs. no. 56138 covering $330,000. bonds and no. 57673 in respect of $242,000-,
(bonds held in valuit with securities.

DATE	FROM WHOM RECEIVED OR TO WHOM DELIVERED	REGISTRATION	IF PURCHASED, OR IF SOLD, OR IF DELIVERED AGAINST PAYMENT INDICATE RATE	TOTAL AMOUNT	IN	C K.	OUT	BALANCE	*UNITS
5/21/46	Montreal Branch	Bearer	ltr. May 17/46		$1,622,000-			$1,622,000-	
9/16/46	Do		Reg. mail				$1,622,000-	NIL	

We are to collect safekeeping charges on these securities at the following rates, less 10% discount Canadian funds. The charge is to be debited to their New York account on our books.

$100,000. and under	1/10%	min.	$ .50	per annum
Over $100,000. to $1,500,000.	1/20%	"	100.00	" "
" $1,500,000. to $5,000,000.	1/40%	"	750.00	" "
" $5,000,000.	1/50%	"	1,250.00	" "

The above rates to apply on all of the securities held for this a/c, collectively, & not on individual issues

SHAW-WALKER

*UNITS COLUMN FOR USE ONLY WHEN SECURITIES INCLUDE FRACTIONAL SHARES, ETC.

Government Exhibit 303

FORM S-200
(THE ROYAL BANK OF CANADA, NEW YORK)

SAFEKEEPING

CARD No. 1

REGISTER

ON ACCOUNT OF	DESCRIPTION OF SECURITY	COUPONS DUE
REGAN POTTER & CO., LTD., S.A.	CANADA, DOMINION OF Eighth Victory Loan Bonds Series "P4" Dated: May 1st, 1945 RATE 1-3/4% MATURITY November 1st, 1949	M 1 | N 1 CURRENCY Canadian

INSTRUCTIONS

The coupons from these securities, as and when they become due, are to be forwarded to Montreal Branch for credit to their account.
(Registration ctfs. no. 56138 covering $330,000. bonds and no. 57673 in respect of $242,000-)
(bonds held in valuit with securities.

DATE	FROM WHOM RECEIVED OR TO WHOM DELIVERED	REGISTRATION	IF PURCHASED, OR IF SOLD, OR IF DELIVERED AGAINST PAYMENT INDICATE RATE	TOTAL AMOUNT	IN	C K.	OUT	BALANCE	*UNITS
5/21/46	Montreal Branch	Bearer	ltr. May 17/46		$1,622,000-	✓		$1,622,000-	
9/16/46	Do		Reg. mail			X	$1,622,000-	NIL	
	We are to collect safekeeping charges on these securities at the following rates, less 10% discount Canadian funds. The charge is to be debited to their New York account on our books.								
	~~$100,000. and under . . . . .~~		~~1/10% min.~~		~~$~~ .50¢		per annum		
	Over $100,000. to $1,500,000. . . .		1/20% "		100.00	"	"		
	" $1,500,000. to $5,000,000. . . .		1/40% "		750.00	"	"		
	" $5,000,000.		1/50% "		1,250.00	"	"		
	The above rates to apply on al of the securities held for this a/c, collectively, and not on individual issues								

*UNITS COLUMN FOR USE ONLY WHEN SECURITIES INCLUDE FRACTIONAL SHARES, ETC.

Government Exhibit 308

GOVERNMENT'S

308

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1955

Regan Potter & Company Ltd S.A.

The Chase National Bank

New York N.Y.

1794

SC 581560

NEW YORK, SEPTEMBER 3, 1946 $453,000.00

The Chase National Bank 1-74

OF THE CITY OF NEW YORK

PAY FOUR HUNDRED FIFTY THREE THOUSAND & 00/100 DOLLARS

TO THE ORDER OF [illegible], POTTER & CO. LTD. S. A.

CASHIER'S CHECK

[illegible]

ASSISTANT MANAGER FOREIGN DEPARTMENT

PAY TO THE ORDER OF ANY BANK OR TRUST COMPANY OR BANKER OR TRUST CO. OR COMPANY

NEW YORK CLEARING HOUSE

THE CHASE NATIONAL BANK 1-74 OF THE CITY OF NEW YORK 1-74

SEP 18 1946

FOR DEPOSIT ONLY TO ACCOUNT OF REGAN, POTTER & CO. LTD. S. A.

No. 125

THE CHASE NATIONAL BANK

RECEIVED PAYMENT SEP 3 1946 CHASE NATIONAL BANK NEW YORK NO. 74

GHQ

RECEIVED PAYMENT
SEP -3 1946
CHASE NATIONAL BANK
NEW YORK
NO. 74

CASHIERS CHECK

No 581559

NEW YORK, SEPTEMBER 3, 1946 $345,630.00.....

The Chase National Bank 1-74

OF THE CITY OF NEW YORK

PAY TO THE ORDER OF REGAN, POTTER & CO. LTD. S. A. THREE HUNDRED FORTY FIVE THOUSAND SIX HUNDRED THIRTY & 00/100..... DOLLARS

1794

FOR DEPOSIT ONLY TO ACCOUNT OF
REGAN, POTTER & CO. LTD. S. A.

41

PAY TO THE ORDER OF
NEW YORK CLEARING HOUSE
SEP 18 46
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
1-74

PANAMA, R. P. August 26, 1946 No. 126

THE CHASE NATIONAL BANK 1-74

OF THE CITY OF NEW YORK

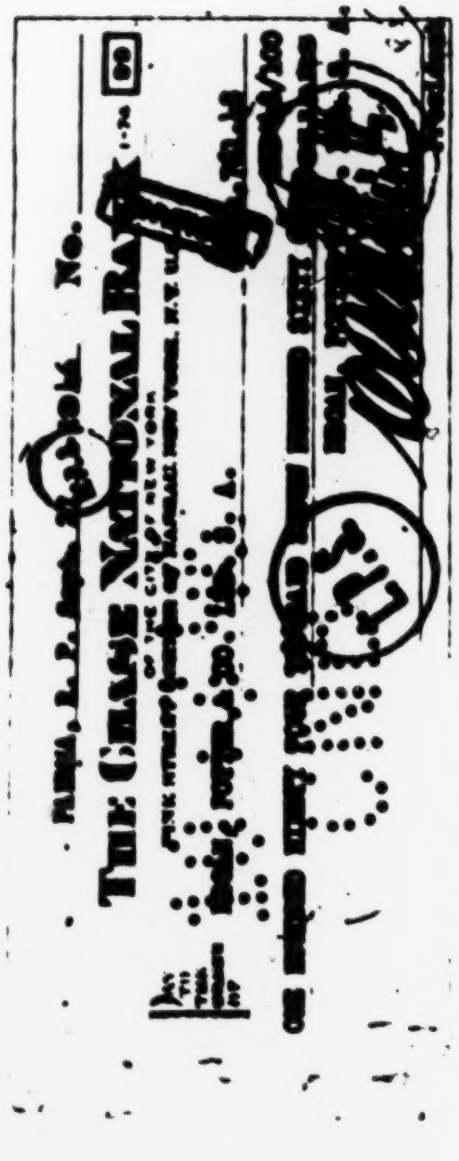
PINE STREET CORNER OF NASSAU NEW YORK, N.Y. U.S.A.

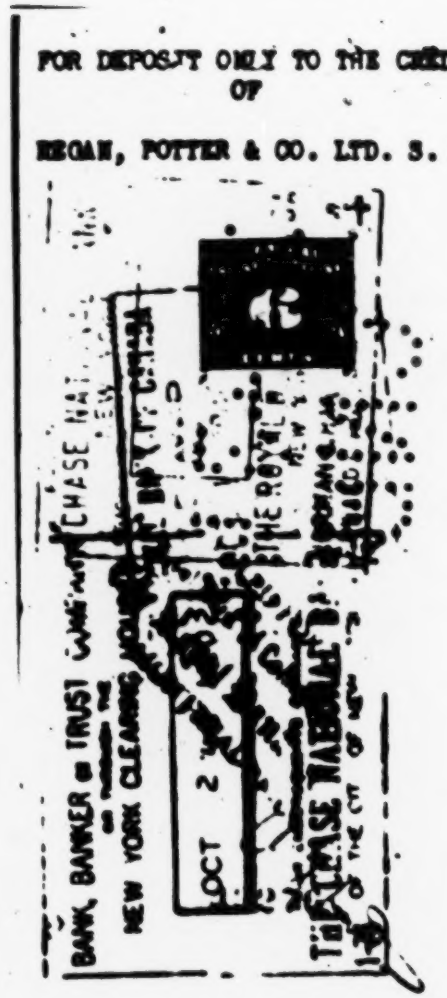
PAY TO THE ORDER OF THE CHASE NATIONAL BANK $ 345,630.00

THREE HUNDRED FORTY FIVE THOUSAND SIX HUNDRED THIRTY & 00/100 DOLLARS

REGAN, POTTER & CO. LTD. S. A.

Government Exhibit 308





Government Exhibit 309

GOVERNMENT'S

309

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1954

SEABOARD SYNDICATE S.A.

THE ROYAL BANK OF CANADA N.Y.

SECURITIES

September 12, 1946

Royal Bank of Canada,
68 William Street,
New York City, N.Y.

Dear Sirs:

Please transfer all Dominion of Canada, 1-3/4% Bonds, Series 1949 and/or 1950, which you are holding in safekeeping for our account, to your Montreal Branch for the same purpose, i.e., safekeeping.

Yours very truly,

THE SEABOARD SYNDICATE, S. A.

President

Government Exhibit 309

FORM R-204
(THE ROYAL BANK OF CANADA, NEW YORK)

SAFEKEEPING

CARD No. 1

REGISTER

ON ACCOUNT OF	DESCRIPTION OF SECURITY	COUPONS DUE	
THE SEABOARD SYNDICATE, S. A.	CANADA, DOMINION OF Ninth Victory Loan Bonds Series "P6" Dated: November 1st, 1945 RATE 1-3/4% MATURITY November 1st, 1950	M 1	N 1
		CURRENCY	
		Can	

INSTRUCTIONS

The coupons from these securities, as and when they become due, are to be forwarded to Montreal Branch for credit to their account.

DATE	FROM WHOM RECEIVED OR TO WHOM DELIVERED	REGISTRATION	IF PURCHASED, OR IF SOLD, OR IF DELIVERED AGAINST PAYMENT INDICATE RATE	IF PURCHASED, OR IF SOLD, OR IF DELIVERED AGAINST PAYMENT INDICATE TOTAL AMOUNT	IN	C K.	OUT	BALANCE	*UNITS
5/15/46	Montreal Branch	Bearer	ltr.	5/14/46	$2,875,000-	X		$2,875,000.-	
9/16/46	Do		Reg.	mail		X	$2,875,000-	NIL	

We are to collect safekeeping charges on these securities at the following rates, less 10% discount Canadian funds, The charge is to be debited to their N.Y. account on our books.

$100,000. and under	1/10% min.	$ .50¢	per annum
Over $100,000. to $1,500,000.	1/20% "	100.00	" "
" $1,500,000. to $5,000,000.	1/40% "	750.00	" "
" $5,000,000.	1/50% "	1,250.00	" "

The above rates to apply on all of the securities held for this a/c, collectively, and not on individual issues.

SHAW-WALKER

*UNITS COLUMN FOR USE ONLY WHEN SECURITIES INCLUDE FRACTIONAL SHARES, ETC.

Government Exhibit 309

M R-[illegible]
(ROYAL BANK OF CANADA, NEW YORK)

SAFEKEEPING

CARD No. 1

REGISTER

ON ACCOUNT OF	DESCRIPTION OF SECURITY	COUPONS DUE	
THE SEABOARD SYNDICATE, S. A.	CANADA, DOMINION OF Eighth Victory Loan Bonds Series "P4" Dated: May 1st, 1945 RATE 1-3/4% MATURITY November 1st, 1949	M 1	N 1
		CURRENCY	
		Can	

INSTRUCTIONS

The coupons from these securities, as and when they become due, are to be forwarded to Montreal Branch for credit to their account.

DATE	FROM WHOM RECEIVED OR TO WHOM DELIVERED	REGISTRATION	IF PURCHASED, OR IF SOLD, OR IF DELIVERED AGAINST PAYMENT INDICATE: RATE	TOTAL AMOUNT	IN	C.K.	OUT	BALANCE	*UNITS
5/15/46	Montreal Branch	Bearer	ltr.	5/14/46	$ 500,000-	X		$ 500,000-	
9/16/46	Do		Reg.	mail		X	$500,000-	NIL	

We are to collect safekeeping charges on these securities at the following rates, less 10% discount Canadian funds. The charge is to be debited to their N.Y. account on our books.

	$100,000. and under.	1/10% min.	$ .50¢	per annum
Over	$100,000. to $1,500,000.	1/20% "	100.00	" "
"	$1,500,000. to $5,000,000.	1/40% "	750.00	" "
"	$5,000,000.	1/50% "	1,250.00	" "

The above rates to apply on all of the securities held by this a/c, collectively, and not on individual issues.

SHAW-WALKER 4613[illegible]-1 1*

*UNITS COLUMN FOR USE ONLY WHEN SECURITIES INCLUDE FRACTIONAL SHARES, ETC.

Government Exhibit 310

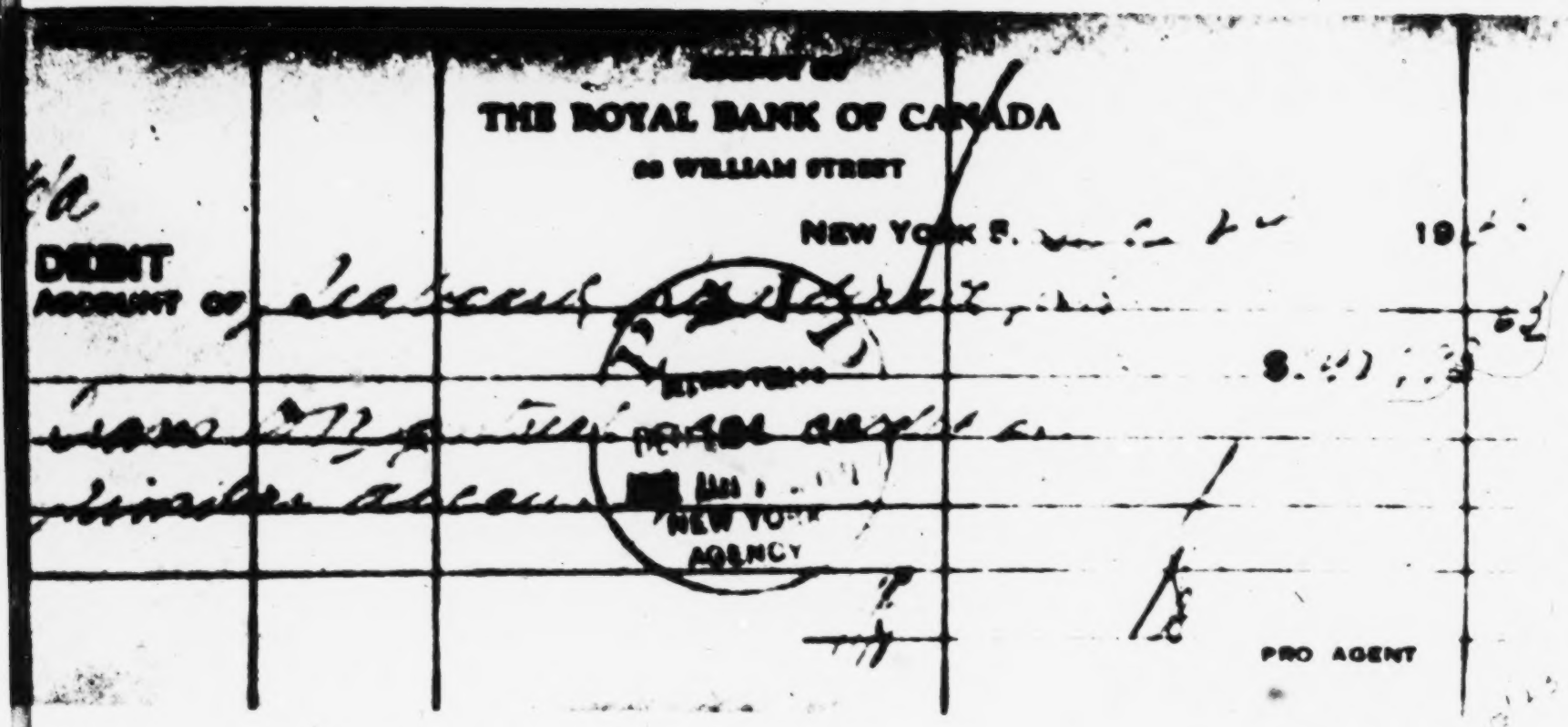
GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1955

SEABOARD SYNDICATE 24

THE ROYAL BANK of CANADA N.Y. N.Y.

Government Exhibit 310



Government Exhibit 313

GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1960

The Seaboard Syndicate S.A.

The Chase National Bank N.Y. N.Y.

Government Exhibit 313

Government Exhibit 314

GOVERNMENT'S

EXHIBIT
U. S. Dist Court
S. D. of N. Y
MAY 27 1955

WALDORF v CO LTD S.A

ROYAL BANK OF CANADA

SECURITIES FILE (BONDS)

681

[redacted]

September 12, 1946

Royal Bank of Canada,
68 William Street,
New York City, N. Y.

Dear Sirs:

Please transfer all Dominion of Canada, 1-3/4% Bonds, Series 1949 and/or 1950, which you are holding in safekeeping for our account, to your Montreal Branch for the same purpose, i.e., safekeeping.

Yours very truly,

WALDORF & CO. LTD. S. A.

President

51

Government Exhibit 314

(ROYAL BANK OF CANADA, NEW YORK)

SAFEKEEPING

CARD No. 1

REGISTER

ON ACCOUNT OF	DESCRIPTION OF SECURITY	COUPONS DUE	
WALDORF & COMPANY LIMITED, S.A. (Incorporated in Panama)	CANADA, DOMINION OF Ninth Victory Loan Bonds Series P6 Dated: November 1st, 1945 RATE 1-3/4% MATURITY November 1st, 1950	M 1	N 1
		CURRENCY	

INSTRUCTIONS

Forward coupons as they mature to Montreal Branch for credit to the Canadian funds account of Waldorf & Company Limited, S. A.

DATE	FROM WHOM RECEIVED OR TO WHOM DELIVERED	REGISTRATION	IF PURCHASED, OR IF SOLD, OR IF DELIVERED AGAINST PAYMENT INDICATE: RATE	TOTAL AMOUNT	IN	C.K.	OUT	BALANCE	*UNITS
5/10/46	Montreal Branch	Bearer	ltr.	5/9/46	$2,200,000-	X		$2,200,000-	
9/16/46	Do		Reg.	mail		X	$2,200,000-	NIL	

We are to collect safekeeping charges on these securities at the following rates, less 10% discount Canadian funds. The charge is to be debited to their N.Y. account on our books.

$100,000. and under.	1/10% min.	$ .50¢	per annum
Over $100,000. to $1,500,000.	1/20% "	100.00	" "
" $1,500,000. to $5,000,000.	1/40% "	750.00	" "
" $5,000,000.	1/50% . "	1,250.00	" "

These rates to apply on all of the securities held for this a/c, collectively, and not on individual issues.

SHAW-WALKER 4S13300-1 1*

*UNITS COLUMN FOR USE ONLY WHEN SECURITIES INCLUDE FRACTIONAL SHARES, ETC.

Government Exhibit 314

ROYAL BANK OF CANADA, NEW YORK)

SAFEKEEPING

CARD No. 1

REGISTER

ON ACCOUNT OF	DESCRIPTION OF SECURITY	COUPONS DUE	
		M 1	N 1
WALDORF & COMPANY LIMITED, S.A. (Incorporated in Panama)	CANADA, DOMINION OF Eighth Victory Loan Bonds Series "P4" Dated: May 1st, 1945 RATE 1-3/4% MATURITY November 1st, 1949	CURRENCY	

INSTRUCTIONS

Forward coupons as they mature to Montreal Branch for credited to the Canadian funds account of Waldorf & Company Limited, S. A.

DATE	FROM WHOM RECEIVED OR TO WHOM DELIVERED	REGISTRATION	IF PURCHASED, OR IF SOLD, OR IF DELIVERED AGAINST PAYMENT INDICATE RATE	TOTAL AMOUNT	IN	C K.	OUT	BALANCE	*UNITS
5/10/46	Montreal Branch	Bearer	ltr.	5/9/46	$ 125,000-	X		$ 125,000-	
9/16/46	Do		Reg.	mail		X	$125,000-	NIL	

We are to collect safekeeping charges on these securities at the following rates, less 10% discount Canadian funds. The charge is to be collected debited to their N.Y. account on our books.

$100,000. and under	1/10% min.	$ .50¢	per annum	
Over $100,000. to $1,500,000.	1/20% "	100.00	"	"
" $1,500,000. to $5,000,000.	1/40% "	750.00	"	"
" $5,000,000.	1/50% "	1,250.00	"	"

These rates to apply on all of the securities held for this a/c, collectively, and not on individual issues.

*UNITS COLUMN FOR USE ONLY WHEN SECURITIES INCLUDE FRACTIONAL SHARES, ETC.

Government Exhibit 315

GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1955

WALDORF & Co. Ltd S.A.

The Royal Bank of Canada N.Y. N.Y

Government Exhibit 320

GOVERNMENT'S

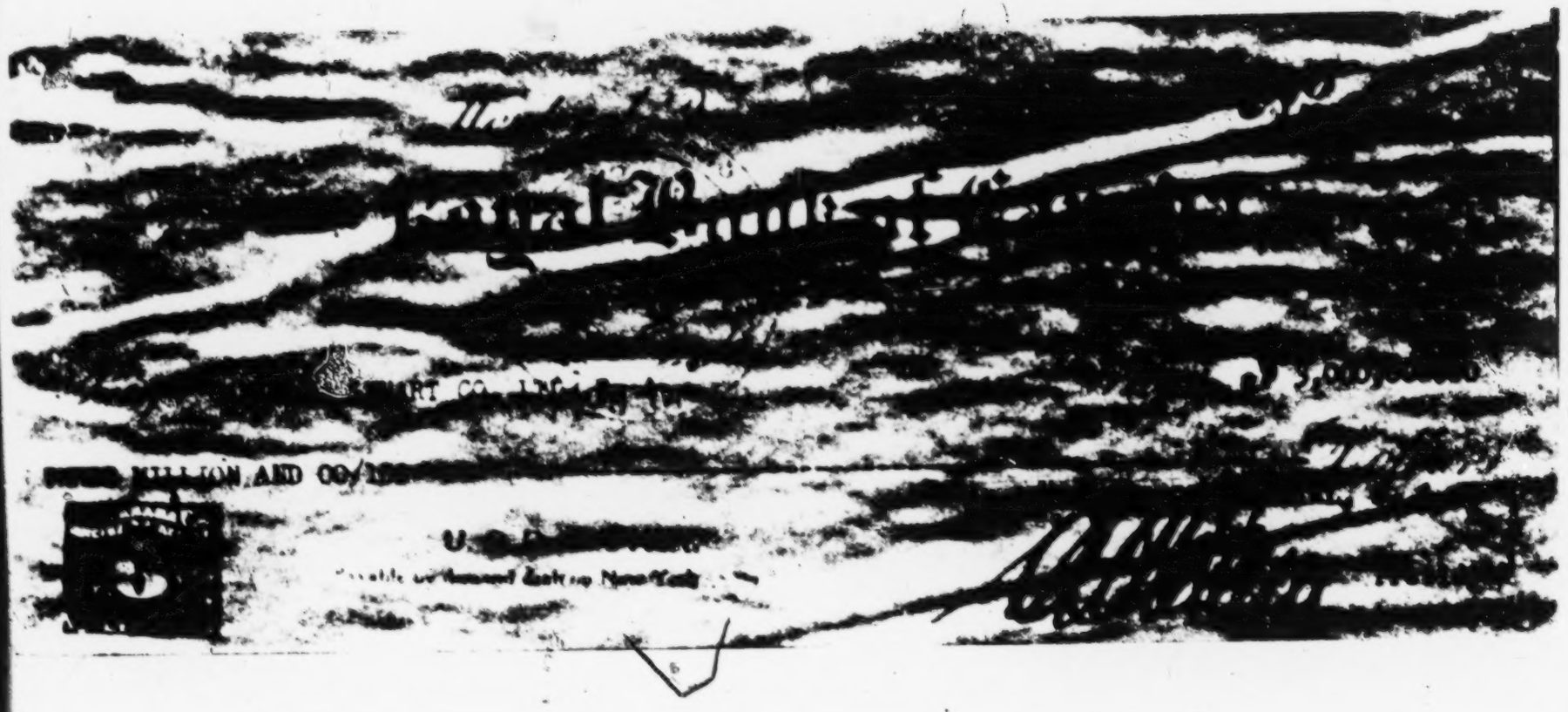
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1955

Compania Continental, S.A.

The Royal Bank of Canada

Montreal Que. (U.S. Funds)

Government Exhibit 320



GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 27 1955

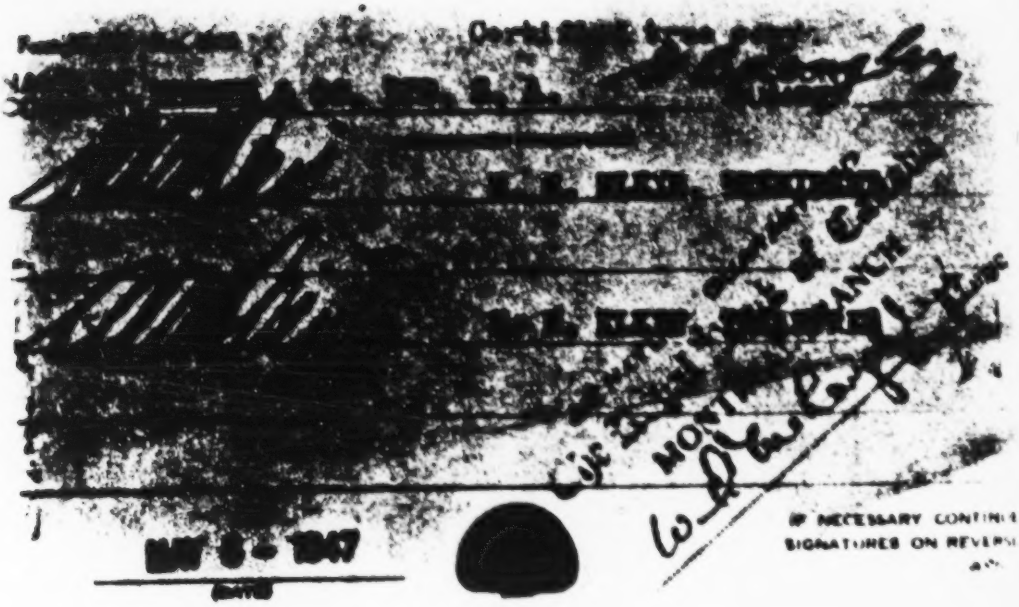
Government Exhibit 324

59

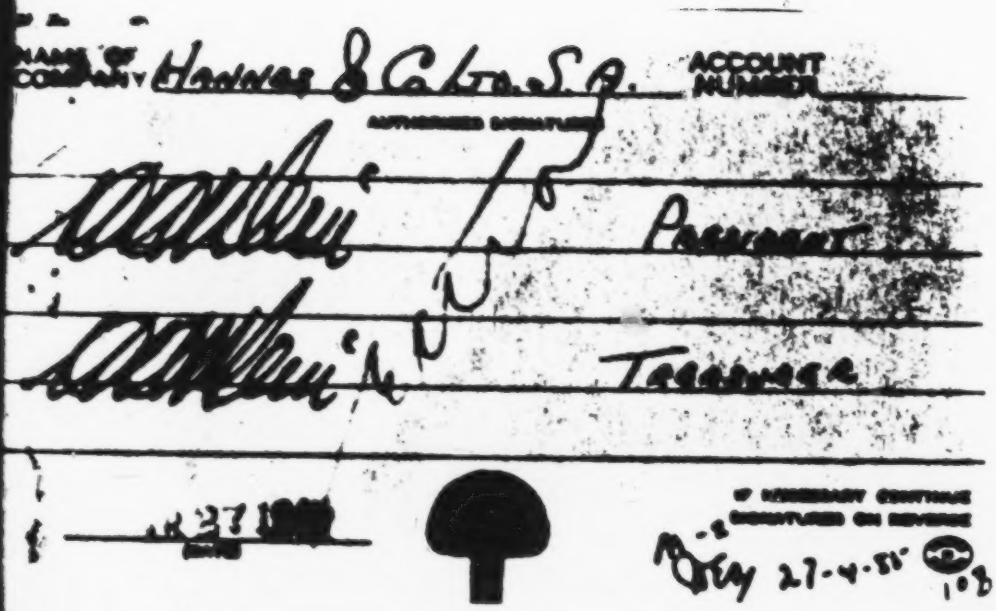
HANNES & Co Ltd S.A.

The ROYAL BANK of CANADA MONTREAL Que

Government Exhibit 324



Government Exhibit 324



I, ELLIS ROSENBERG, Secretary of "HAINES & COMPANY, LTD., S.A.", a corporation duly organized and existing under the laws of the Republic of Panama, do hereby certify that the following is a true and correct transcript of a resolution duly adopted at a meeting of the Board of Directors of said corporation, duly called and held in Room 561, Royal York Hotel, in the City of Toronto, Province of Ontario, Dominion of Canada, on March 19, 1947, at which a quorum was present and all legal requirements were strictly observed.

G E Langley.

RESOLVED: That Mr. Hyman Harvey Klein, in his capacity as the President and/or Treasurer, be and he hereby is authorized for and on behalf of this Corporation to open and maintain bank accounts in any bank or branch or agency of any bank whether in Panama or in any other place throughout the world and to sign in said Bank accounts any and all checks, drafts and any other orders with respect to any funds at any time, inclusive of any such checks, drafts or other orders in favor of said Hyman Harvey Klein or any other person

FURTHER RESOLVED: That the Royal Bank of Canada, Head Office, Montreal, Canada or any of its branches and/or Agencies throughout the world (hereinafter called the Bank) be and hereby are designated depositaries of the funds of "HAINES & COMPANY, LTD., S.A." and that the said Hyman Harvey Klein be and hereby is authorized to sign for and on behalf of this Corporation as President and/or Treasurer any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corporation with the bank and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders in favor of the above designated person or other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and that the Bank is hereby further authorized to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation any and all checks, drafts, notes, or other instruments for the payment of money, whether or not endorsed by this Corporation shall have the unqualified approval of this Corporation if signed by the said Hyman Harvey Klein and also to receive as the act of this Corporation reconcilements of accounts when signed by the above designated person or his appointee; and be it

FURTHER RESOLVED: That the said Hyman Harvey Klein, as President and/or Treasurer of this Corporation be and he is hereby authorized for and on behalf of this corporation to transact any and all such business with or through the Bank at any time as may be deemed by said person and in reference to any of the businesses hereinbefore referred to, to make, enter into, execute and deliver to the Bank such documents as to such person may seem to be necessary or desirable; any and all the withdrawals of money and/or transactions heretofore had in behalf of this Corporation with the Bank being hereby ratified, confirmed and approved.

FURTHER RESOLVED: That the said Hyman Harvey Klein, as President and/or Treasurer of this Corporation be and he is hereby authorized to deposit any and all stocks,

with any Bank to withdraw the whole or part of such stocks, bonds, debentures and other securities of every kind or nature for any purpose whatsoever, and generally to carry out any transactions with any Bank in respect of the deposit or withdrawal of any stocks, bonds, debentures and other securities of every kind and nature which are the property of the Corperation and to sign and issue any and all instructions for the above purposes.

FURTHER RESOLVED: That the said Hyman Harvey Klein may in writing appoint from time to time any person as he may deem advisable for the purpose of receiving all paid checks, and vouchers and/or signing or delivering to the Bank the Bank's form of settlement of balances and releases.

I FURTHER CERTIFY: That Mr. HYMAN HARVEY KLEIN is at the present time the only person authorized in his capacity as President and/or Treasurer of this Company to exercise the powers contained in this resolution.

I ALSO FURTHER CERTIFY: That "HAMMAS & COMPANY, LTD. S. A." has the power to take the action called for by the resolution hereinbefore transcribed as well as that no action has been taken to rescind or amend the foregoing which is all in full force and effect at the present time.

IN WITNESS WHEREOF: I have hereunto affixed my hand this 19th day of March 1947.

Ellis Rosenbery (Sgn)
Secretary

Certified true copy:
F. E. Langley

May 9th, 1947 - Certified a true copy of the original document held on file at The Royal Bank of Canada, Montreal.

pro Manager,

pro Accountant

Government Exhibit 324

L L Langley

EXAMINED

RESOLUTION re SAFE DEPOSIT BOX LEASED BY AN INCORPORATED COMPANY

EXTRACT from the Minutes of a Meeting of the Board of Directors of

HANKES AND COMPANY, LTD., S. A.

duly convened and held at the office of the Company in the City of Toronto, Canada on the 19th day of March 1947.

"There was read and submitted to the Meeting printed Rules, Regulations and Conditions of Lease by this Company of a safe deposit box in the vaults of THE ROYAL BANK OF CANADA, for the rental and upon the terms and conditions therein set out.

"On motion, duly proposed and seconded, it was unanimously resolved:

That the said form of Lease and Rules, Regulations and Conditions applicable thereto, be and the same are hereby approved, and that H. H. Klein and/or E. Rosenberg

or any one of them be and they are hereby authorized to sign the said agreement and to have access to and control of the contents of such safe deposit box, with full power to each of them to appoint substitutes in their place and stead, and the present resolution shall apply not only to the said safe deposit box but to any other safe deposit box that may be leased by this company, and that the present resolution be communicated to the Bank and remain in force until notice in writing to the contrary be given to the Manager of the Branch of the Bank in which any box is leased and receipt of such notice duly acknowledged in writing."

We, the undersigned, hereby certify and declare that the foregoing is a true copy of a resolution passed at a meeting of Directors of HANKES AND COMPANY, LTD., S. A. duly convened and held on the day, month and year above written.

GIVEN at TORONTO, ONT. CANADA 19th day of March 1947.

President.

Secretary.

NO SEAL REQUIRED IN PANAMA.

HANNES & COMPANY LTD. S. A.
80 AVENIDA A
PANAMA, R. P.

April 28, 1947

[illegible] Royal Bank of Canada,
[illegible] Royal Bank Building,
[illegible] St. James Street, West,
[illegible], Quebec, Canada.

[illegible] Attention: Mr. W. E. McLaughlin

[illegible] will you please accept this letter as your authority [illegible] transfer at once, our U. S. Dollar account amounting to [illegible] to The Royal Bank of Canada, Toronto, Ontario, [illegible] to our credit in an account to be opened [illegible] account to be known as a U. S. Dollar [illegible]

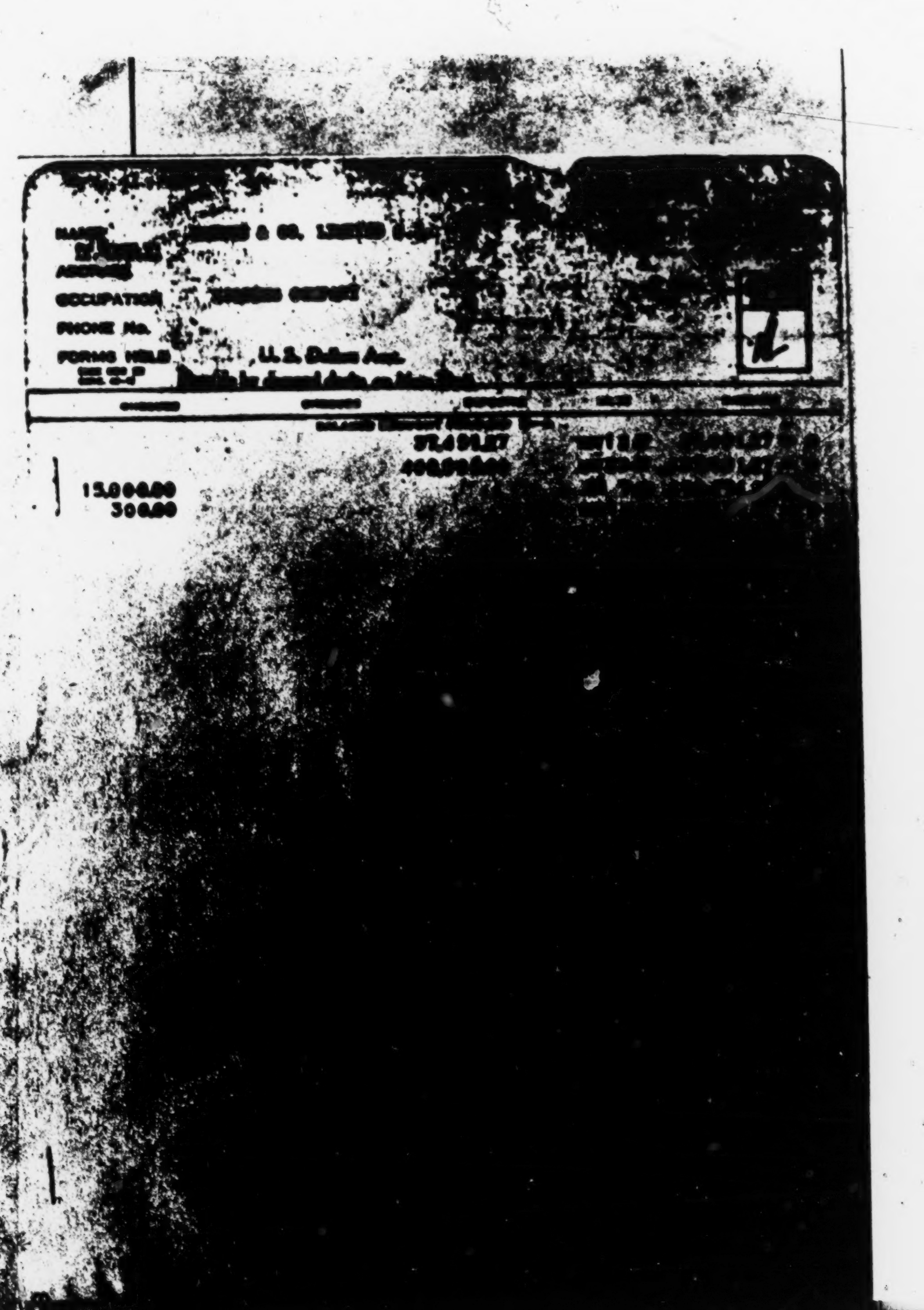
[illegible] please forward to that Bank, a copy of [illegible] resolution as now held by your office, together [illegible]

[illegible] will be deeply [illegible]

[illegible] very truly [illegible]

[illegible] & COMPANY LTD. S. A.

[illegible]



HARRIS & COMPANY LTD. S.A.

ADDRESS

OCCUPATION

PHONE No.

FORMS HELD

U. S. Dollars Acct.

Do not send statements. Refer Mr. McLaughlin.

CHECKING OFFICER'S INITIALS

CHEQUES	DEPOSITS	DATE 1947	BALANCE
BALANCE BROUGHT FORWARD			
	1,043,035.66	MAR 27	1,043,035.66
511.63			
1.29		MAR 27	1,042,522.74
		04 MAY 8	1,042,522.78*
042,522.78-		MAY 8	.00*

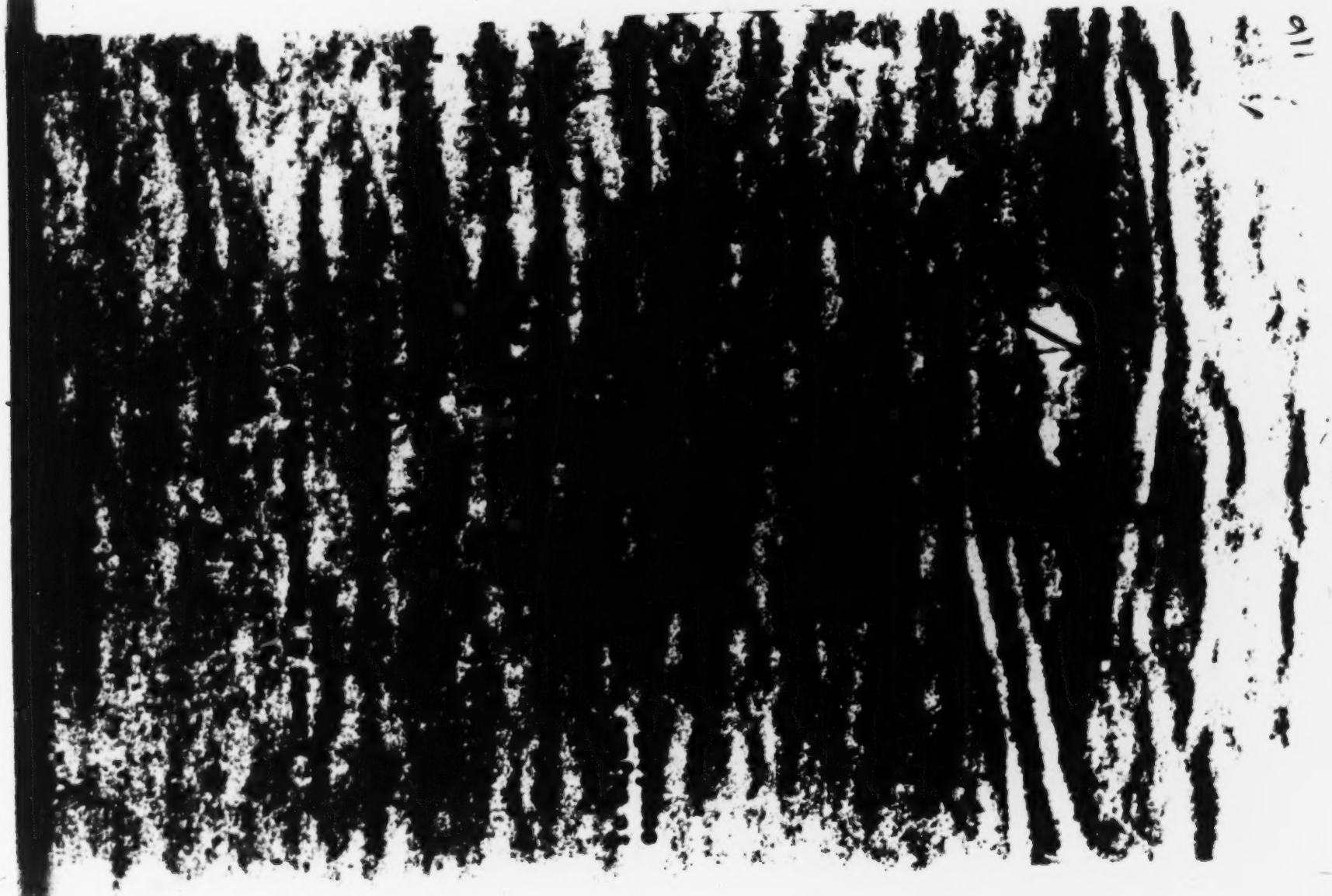
THE ROYAL BANK OF CANADA

Government Exhibit 324

THE ROYAL BANK OF CANADA
CREDIT

69

Government Exhibit 324



Government Exhibit 324

Government Exhibit 324

THE ROYAL BANK OF CANADA
NOV 9- 1953
Draft No. 52137

Government Exhibit 324

Government Exhibit 324

No 8-52844

The Royal Bank of Canada

INCORPORATED

1-74
210

MONTREAL, P.Q. 9 - 1953 19

TO THE ORDER OF

HANNER & COMPANY LTD. S.A. $100,000.00

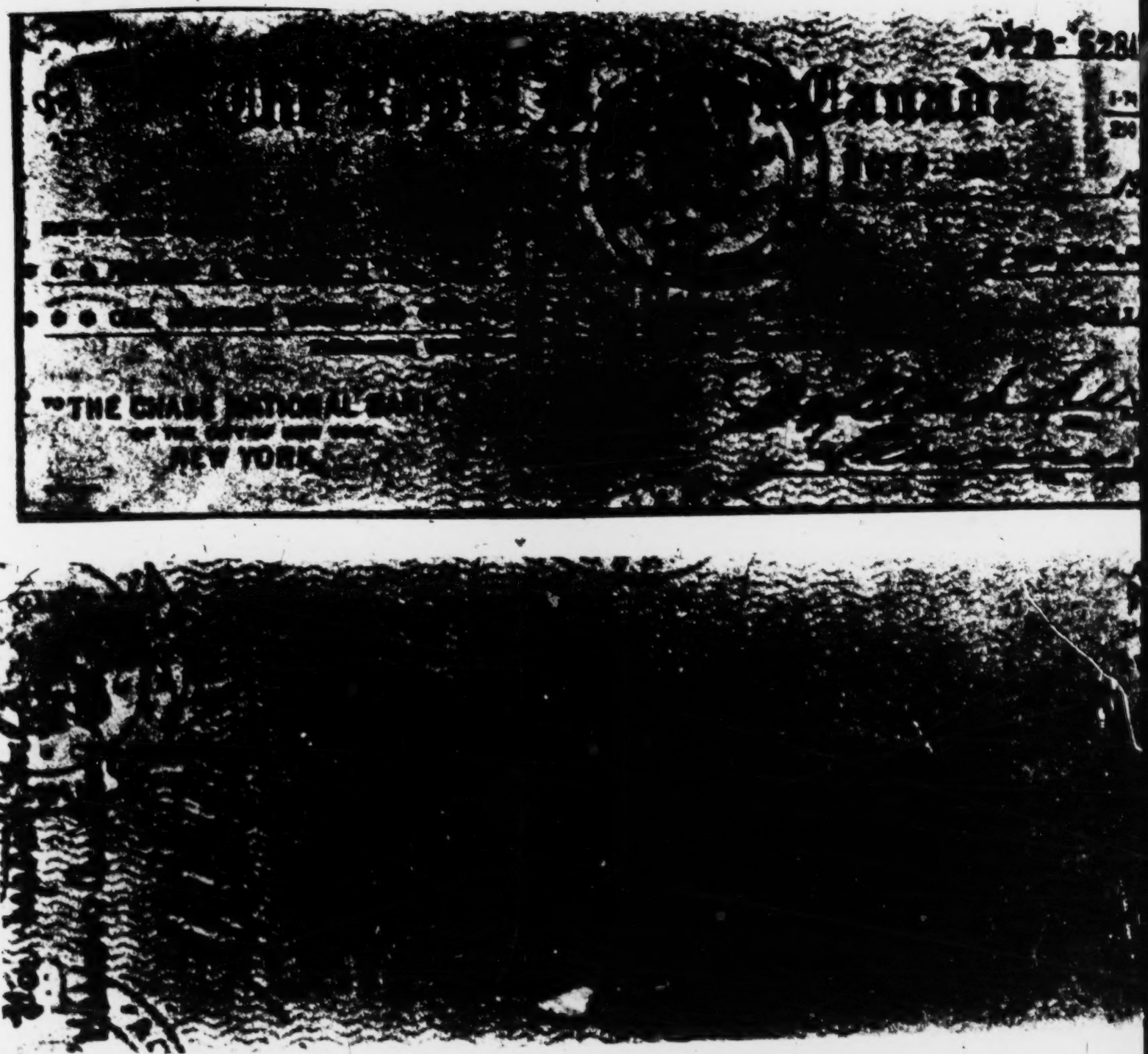
ONE HUNDRED THOUSAND ONLY DOLLARS

PAYABLE THROUGH THE NEW YORK CLEARING HOUSE

THE CHASE NATIONAL BANK.
OF THE CITY OF NEW YORK
NEW YORK.

Hanner & Company S.A.

Government Exhibit 324



Government Exhibit 325

GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 31 1955

HANNEA v Co Ltd S A

The Royal Bank of Canada Toronto Ont.

BY AN INCORPORATED COMPANY

EXTRACT from the Minutes of a Meeting of the Board of Directors of

HANNES AND COMPANY, LTD. S. A.

duly convened and held at the office of the Company in the City of

Toronto, Canada on the 19th day of March 1947

"There was read and submitted to the Meeting printed Rules, Regulations and Conditions of Lease by this Company of a safe deposit box in the vaults of THE ROYAL BANK OF CANADA, for the rental and upon the terms and conditions therein set out.

"On motion, duly proposed and seconded, it was unanimously resolved:

That the said form of Lease and Rules, Regulations and Conditions applicable thereto, be and the same are hereby approved, and that H. H. Klein and/or E. Rosenberg

or any one of them be and they are hereby authorized to sign the said agreement and to have access to and control of the contents of such safe deposit box, with full power to each of them to appoint substitutes in their place and stead, and the present resolution shall apply not only to the said safe deposit box but to any other safe deposit box that may be leased by this company, and that the present resolution be communicated to the Bank and remain in force until notice in writing to the contrary be given to the Manager of the Branch of the Bank in which any box is leased and receipt of such notice duly acknowledged in writing."

We, the undersigned, hereby certify and declare that the foregoing is a true copy of a resolution passed at a meeting of Directors of HANNES AND COMPANY, LTD. S. A. duly convened and held on the day, month and year above written

GIVEN at TORONTO, ONT. CANADA this 19th day of March

1947

H

President.

Secretary.

Government Exhibit 325

77

I, [redacted], Secretary of [redacted], a corporation duly organized and existing under the laws of the Republic of Panama, do hereby certify that the following is a true and correct transcript of a resolution duly adopted at a meeting of the Board of Directors of said corporation, duly called and held in Room 908, Royal Bank Hotel, in the City of Toronto, Province of Ontario, Dominion of Canada, on March 19, 1947, at which a quorum was present and all legal requirements were strictly observed.

[redacted]: That Mr. Hyman Harvey Klein, in his capacity as the President and/or Treasurer, be and he hereby is authorized for and on behalf of this Corporation to open and maintain bank accounts in any bank or branch or agency of any bank whether in Panama or in any other place throughout the world and to sign in said Bank accounts any and all checks, drafts and any other orders with respect to any funds at any time, inclusive of any such checks, drafts or other orders in favor of said Hyman Harvey Klein or any other person.

[redacted]: That the Royal Bank of Canada, Head Office, Montreal, Canada or any of its branches and/or Agencies throughout the world (hereinafter called the Bank) be and hereby are designated depositories of the funds of "[redacted], LTD., S. A." and that the said Hyman Harvey Klein be and hereby is authorized to sign for and on behalf of this Corporation as President and/or Treasurer any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corporation with the bank and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders in favor of the above designated person or other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and that the Bank is hereby further authorized to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation any and all checks, drafts, notes or other instruments for the payment of money, whether or not endorsed by this Corporation shall have the unqualified approval of this Corporation if signed by the said Hyman Harvey Klein and also to receive as the act of this Corporation reconciliments of accounts when signed by the above designated person or his appointee; and be it

[redacted]: that the said Hyman Harvey Klein, as President and/or Treasurer of this Corporation be and he is hereby authorized for and on behalf of this Corporation to transact any and all such business with or through the Bank at any time as may be deemed by [redacted] and deliver to the Bank such documents as to such person [redacted] to be necessary or desirable, any and all

and deliver to the Bank such documents as to such person may seem to be necessary or desirable; any and all the withdrawals of money and/or transactions heretofore had in behalf of this Corporation with the Bank being hereby ratified, confirmed and approved.

FURTHER RESOLVED: That the said Hyman Harvey Klein, as President and/or Treasurer of this Corporation be and he is hereby authorized to deposit any and all stocks, bonds, debentures and other securities of every kind and nature which are the property of the Corporation with any Bank, to withdraw the whole or part of such stocks, bonds, debentures and other securities of every kind and nature for any purpose whatsoever, and generally to carry out any transactions with any Bank in respect of the deposit or withdrawal of any stocks, bonds, debentures and other securities of every kind and nature which are the property of the Corporation and to sign and issue any and all instructions for the above purposes.

FURTHER RESOLVED: That the said Hyman Harvey Klein may in writing appoint from time to time any person as he may deem advisable for the purpose of receiving all paid checks, and vouchers and/or signing or delivering to the Bank the Bank's form of settlement of balances and releases.

I FURTHER CERTIFY: That Mr. HYMAN HARVEY KLEIN is at the present time the only person authorized in his capacity as President and/or Treasurer of this Company to exercise the powers contained in this resolution.

I ALSO FURTHER CERTIFY: That "BAHMAS & COMPANY, LTD. S. A." has the power to take the action called for by the resolution hereinbefore transcribed as well as that no action has been taken to rescind or amend the foregoing which is all in full force and effect at the present time.

IN WITNESS WHEREOF: I have hereunto affixed my hand this 19th day of March 1947.

Secretary

HANNES & COMPANY LTD. S. A.
3RD AVENIDA A
PANAMA, R. P.

March 25, 1950

Royal Bank of Canada,
Head Office,
Montreal, Quebec,
Canada.

Dear Sirs:

We enclose herewith, our U. S. Dollar check drawn on your Toronto Branch, in the amount of $150,000.00, and we would request that in exchange, you issue three $50,000.00 U. S. Dollar Drafts in favor of Hannes & Company, Ltd. S.A., drawn on the Royal Bank of Canada, New York Agency, or such other New York City Bank that may be your Correspondents, and debit our U. S. Dollar account at your Toronto Branch with the amount of our check herewith.

Thanking you for your courtesy in connection with this matter, we are

Yours very truly,

HANNES & COMPANY, LTD. S. A.

President

HHK/r

Government Exhibit 325

THE ROYAL BANK OF CANADA

TORONTO 1, ONT.,

MANNES & CO.LTD. S.A. AVENIDA, A

Panama

We have today credited your account with the last total shown in [illegible]
being the total proceeds of the items described below:

PARTICULARS (1)	AMOUNT OF ITEM (2)	EXCHANGE (3)	PROCEEDS (4)	TOTAL OF COLUMN (5)
ROYAL BANK OF CANADA MONTREAL QUE.				
OUR SELVES 099	1,042.522.78		1,042.522.78	1,042.522.78

MANNES & CO LTD- S.A.
GENERAL TRADING-EXPORT-IMPORT
20 AVENIDA A.,
PANAMA, R.P.

CHECKED BY

LAST TOTAL ABOVE IS THE AMOUNT CREDITED TO YOUR ACCOUNT

11
1

№ 8-.52840

The Royal Bank of Canada

INCORPORATED 1869

1-74
210

MONTREAL, QUE. NOV 9 1953 19

PAY TO THE ORDER OF

HANNES & COMPANY LTD. S.A. $100,000.00

ONE HUNDRED THOUSAND 00/100

PAYABLE THROUGH THE NEW YORK CHARTER BANK

CHASE NATIONAL BANK.
OF THE CITY OF NEW YORK
NEW YORK.

PAID
NOV 9 1953
MONTREAL

SF 271 (6-50)

ACCOUNT NUMBER IF SAVINGS

NAME HANNES AND COMPANY, LTD. S. A. S.D.F. 394

DATE			FORM No.	PARTICULARS	INITIALS
Mar.	19	47	Le 482	Resolution re Safety Deposit Box - Access to be granted to H. H. Klein or E. Rosenberg.	[illegible]
				Certified copy of Directors Resolution authorizing Hyman Harvey Klein to sign cheques, notes, drafts, etc, endorse for deposit and verify the account.	[illegible]
				[illegible] wish to [illegible] [illegible].	

T [illegible] 28-4-55

(IF NECESSARY CONTINUE RECORD ON REVERSE)

Government Exhibit 325

SP 986 (1-48)

NAME HANNES

OCCUPATION [illegible]

ADDRESS 20 Aven[illegible]

Panama,

DATE OF FIRST INQUIRY AND BY WHOM ANSWERED

BY WHOM INTRODUCED AND [illegible]

[illegible]. LTD. S.A. TELEPHONE NO. 82

[illegible]rading -Export-Import OTHER CONNECTIONS

[illegible]a A.,

R.P.

D

D/OR REFERENCES

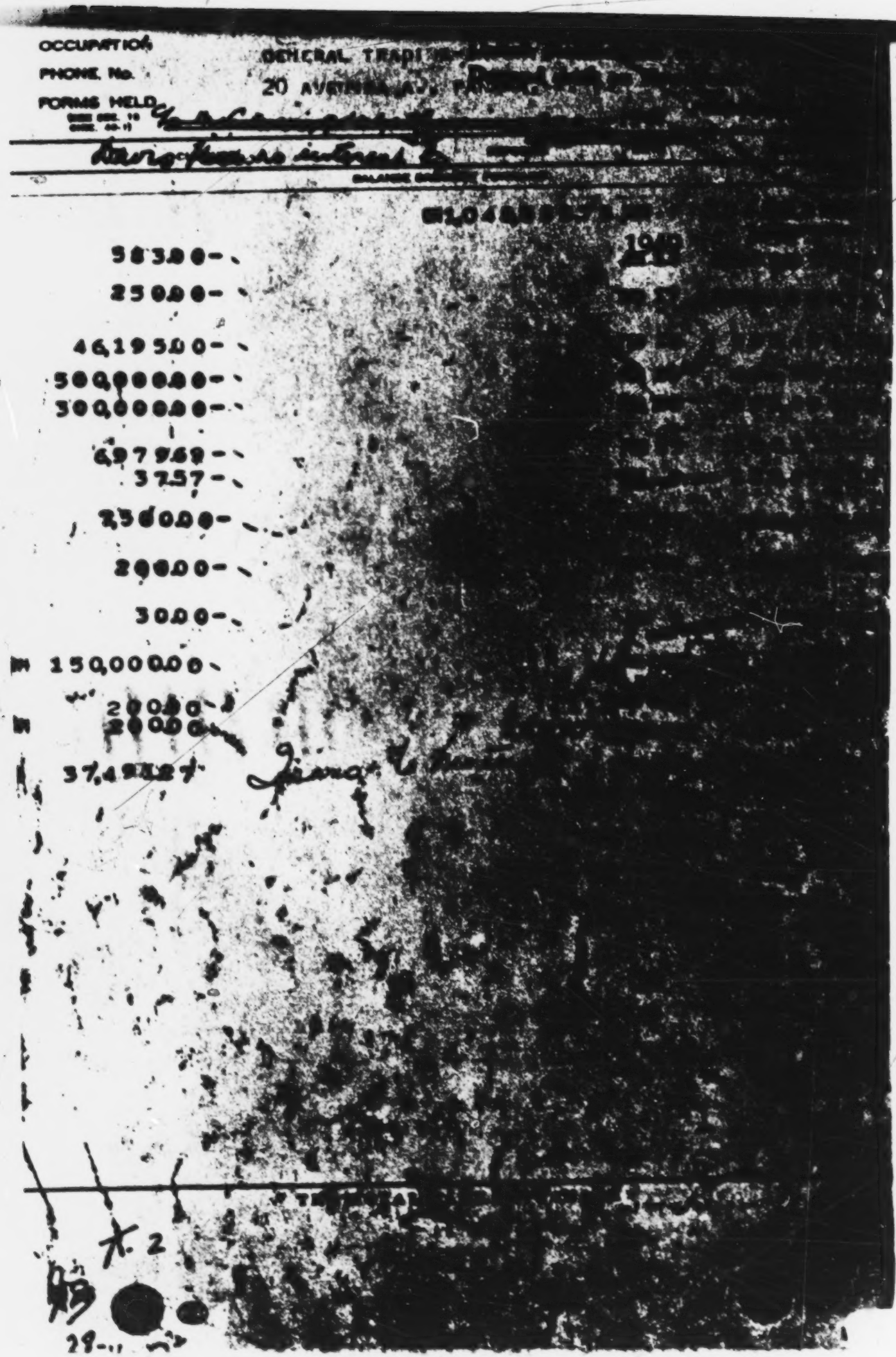
ACCOUNTS OPENED	DATE OPE[illegible]
CURRENT ACCOUNT	May [illegible]
SAVINGS A/C NO.	
FOREIGN CURR. ACCT.	
SAFEKEEPING ACCT.	

EXAMINED BY

OPENED	AMOUNT	DATE CLOSED	For. Exch.	CHECKED
[illegible]/47	$1,042,522.78		Trans. from Montreal	
		June 10/53	This account opened through the good offices of Mr. Maurice Haas. See card Parsee Incorporated.	
		To Montreal Br		

SEE REVERSE FOR GENERAL [illegible]

OCCUPATION



OCCUPATION

PHONE No.

FORMS HELD

GENERAL TRADI

20 AVENIDA AV.

BALANCE

583.00-

250.00-

46,195.00-

500,000.00-

300,000.00-

6,979.69-

37.57-

2,500.00-

200.00-

30.00-

150,000.00-

200.00-

200.00-

37,49[illegible]27

[illegible]

[illegible]

[illegible]

28-11

FORM [illegible] ISSUED 9-38

STATEMENT OF ACCOUNT

Please Notify the Ledgerkeeper of any Change of address

HANNES & CO LTD. S.A.(U.S. FUNDS ACCT)
20,AVENDA A. PANAMA R.P.
8748
GEN. TRADING, EXPORTS &IMPORTS.

EXPLANATION OF CHARACTERS
D —Discount Credited
CL —Collection Credited
CC —Certified Cheque
RB —Returned Bills
DM—Debit Memo
CM—Credit Memo
IN —Interest
EC —Error Corrected
LST—Total Listed Cheques
OD—Overdraft
OP—Operating Charge

IN ACCOUNT WITH **THE ROYAL BANK OF CANADA**
TORONTO

CHEQUES	DEPOSITS	DATE	BALANCE
Balance Brought Forward			
	CM1,042,522.78	MAY 7/47	1,042,522.78 S
583.00		JAN14/49	1,041,939.78 S
250.00		JAN17/49	1,041,689.78 S
46,195.00		FEB10/49	995,494.78 S
500,000.00		FEB15/49	495,494.78 S
300,000.00		FEB23/49	195,494.78 S
6,979.69		FEB25/49	188,515.09 S
37.57		MAR 9/49	188,477.52 S
7,500.00		MAY17/49	180,977.52 S
200.00		MAY20/49	180,777.52 S
30.00		JUN 9/49	180,747.52 S
DM 150,000.00		MAR28/50	30,747.52 S
200.00		AUG 4/51	30,547.52 *

Certified as a true copy of the subject company's statement of account with

THE ROYAL BANK OF CANADA
TORONTO, ONT.

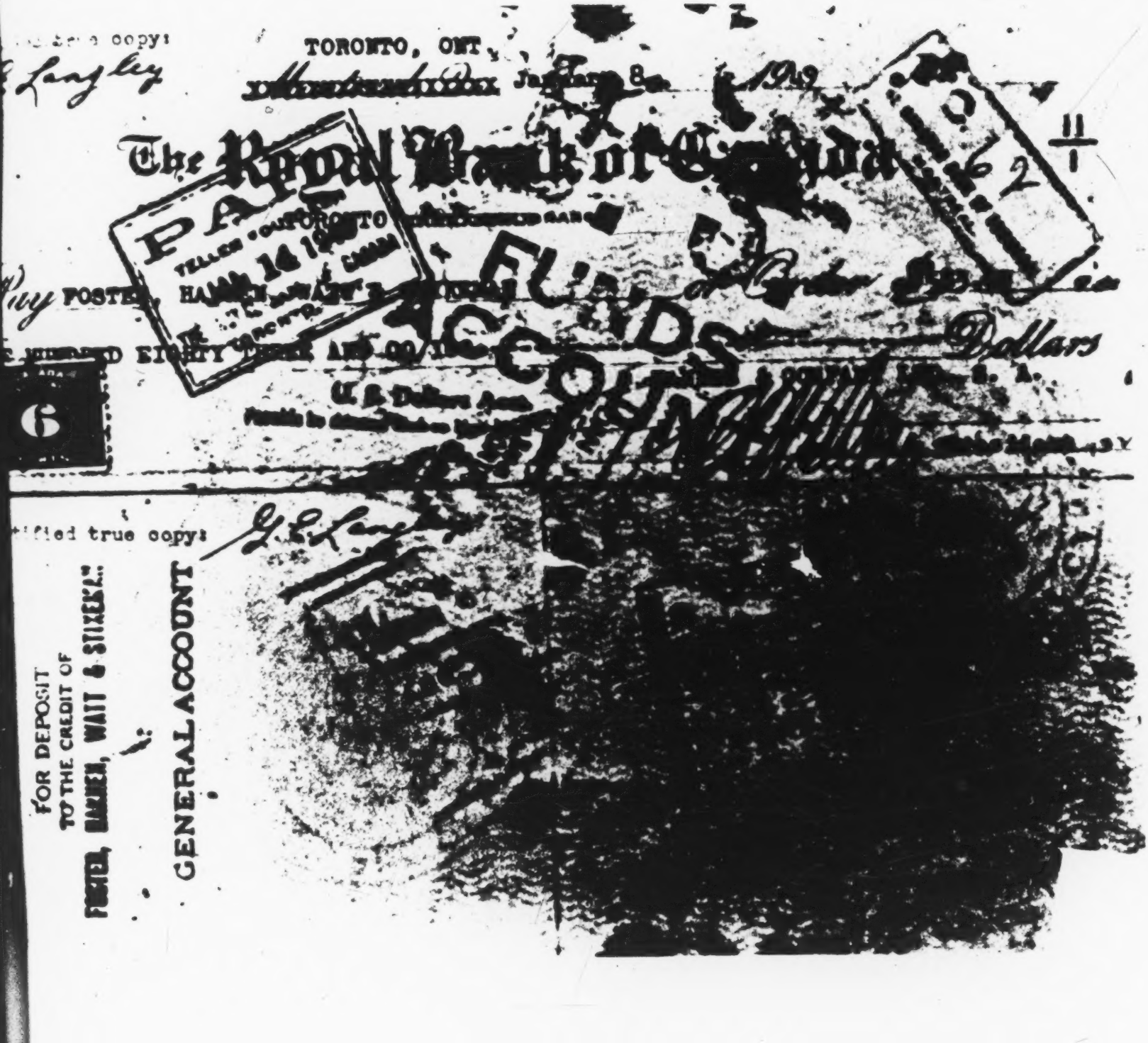
[signature]
RRO MANAGER

PLEASE EXAMINE PROMPTLY AND REPORT ANY DIFFERENCE IN THIS STATEMENT DIRECT TO THE ACCOUNTANT

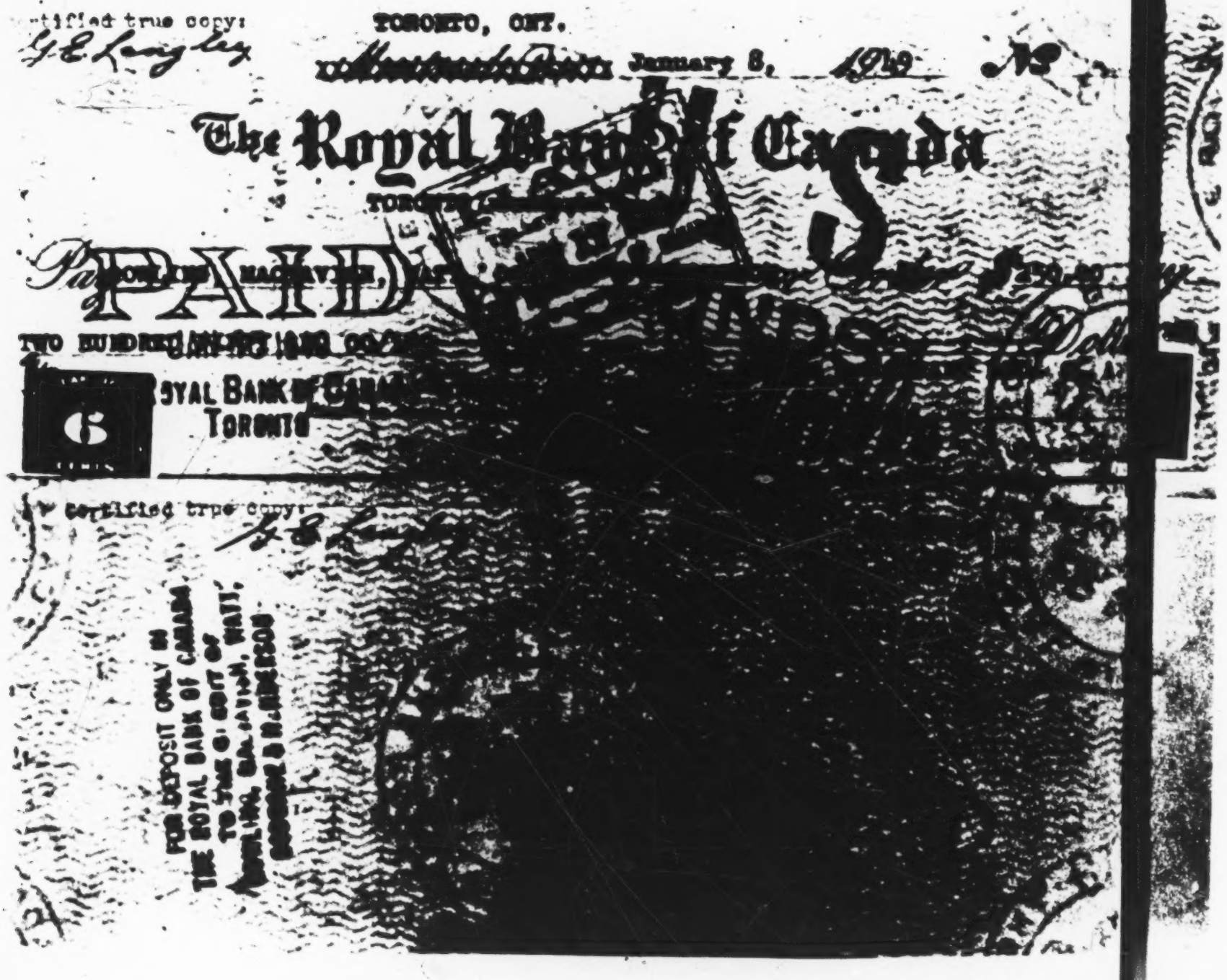
Government Exhibit 325

84

Government Exhibit 325



Government Exhibit 325



Government Exhibit 325

Certified true copy:
G. E. Langley Toronto, Ont. February 1, 1949 No

11/2

The Royal Bank of Canada

PAID

TELLER FRANCHISE BRANCH

Order $46,195.00

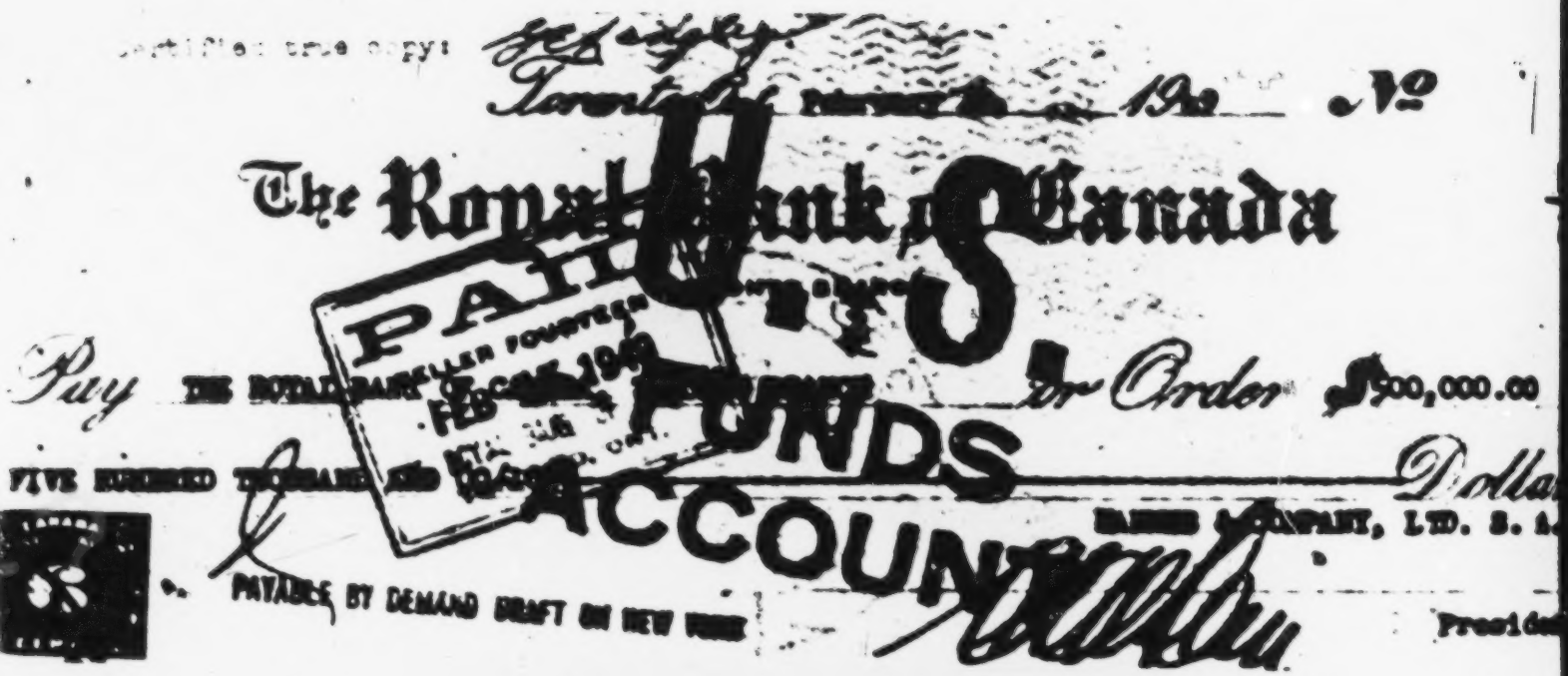
Dollars

ACCOUNT

President

Certified true copy:
G. E. Langley

Government Exhibit 325


certified true copy

Toronto, February 1, 1940 No

The Royal Bank of Canada

PAID

FEB 1940

Pay THE ROYAL BANK OF CANADA or Order $500,000.00

FIVE HUNDRED THOUSAND AND 00/100 Dollars

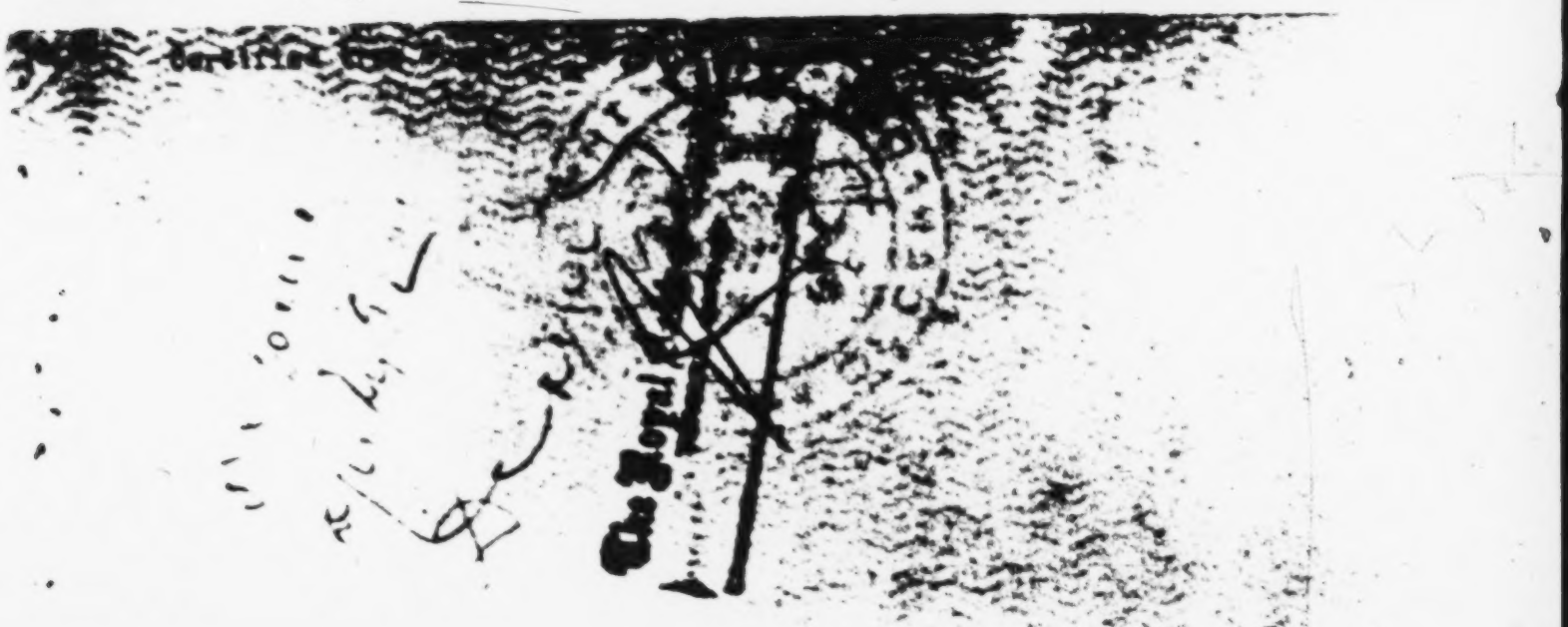
FUNDS

ACCOUNT

PAYABLE BY DEMAND DRAFT ON NEW YORK

BANK MONTREAL, LTD. S. A.

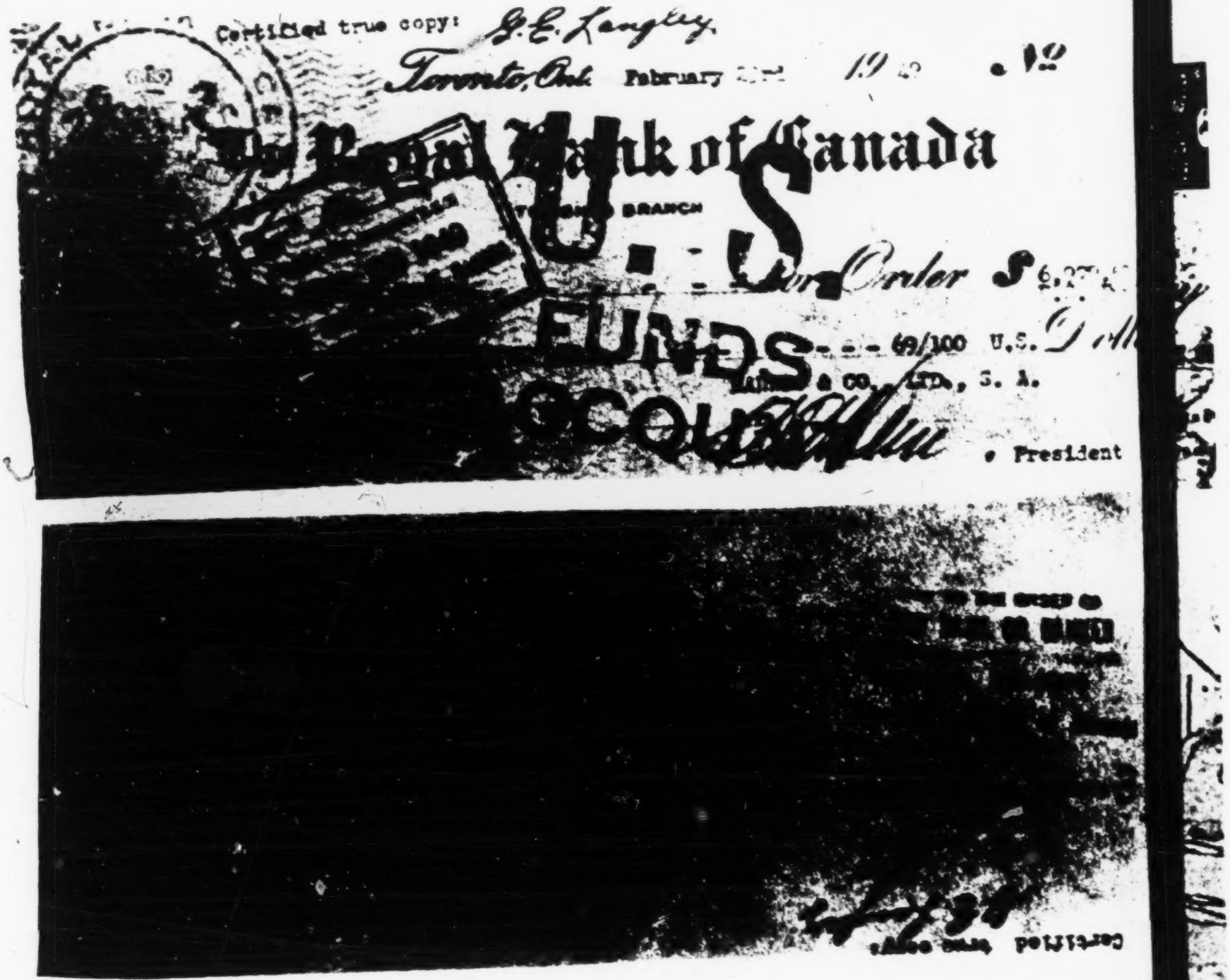
President


certified true copy

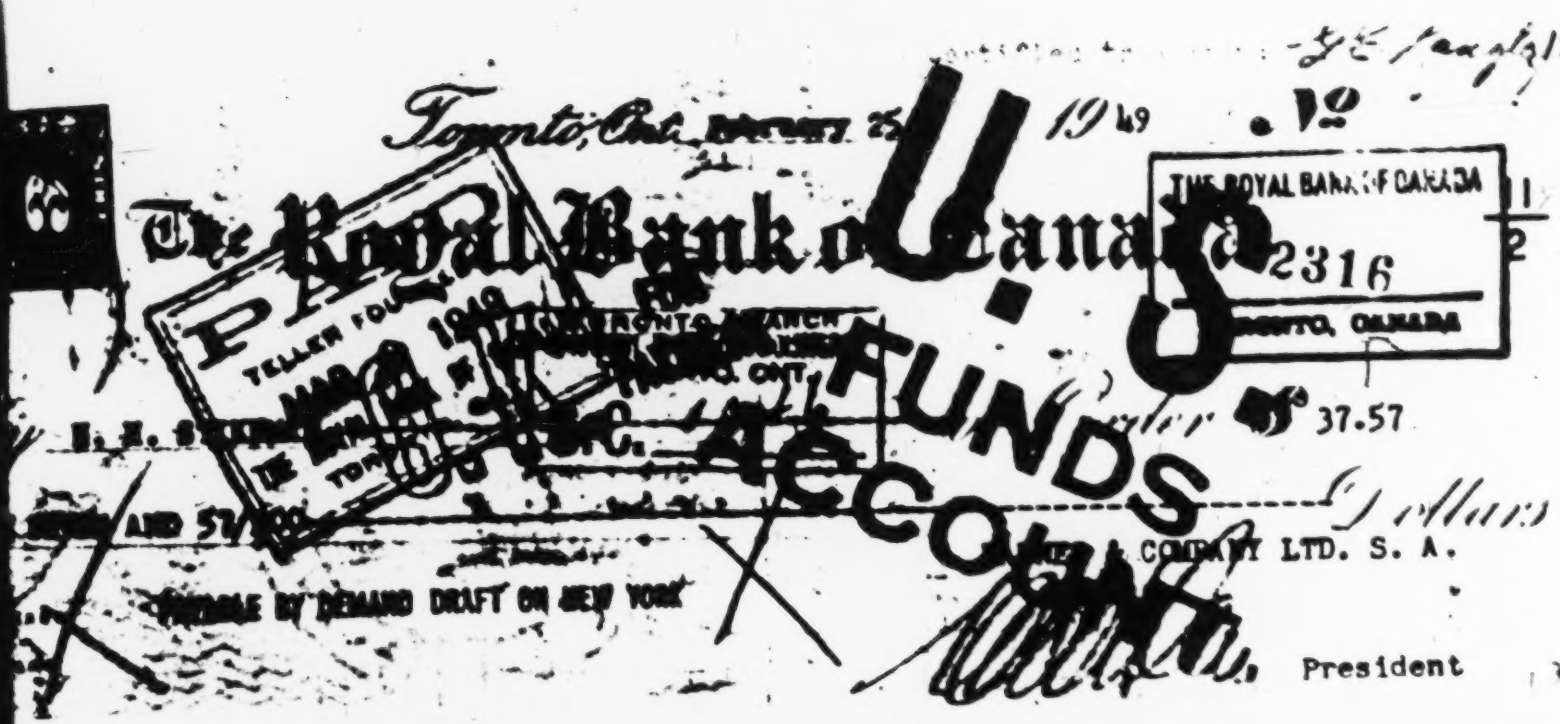
Royal Bank

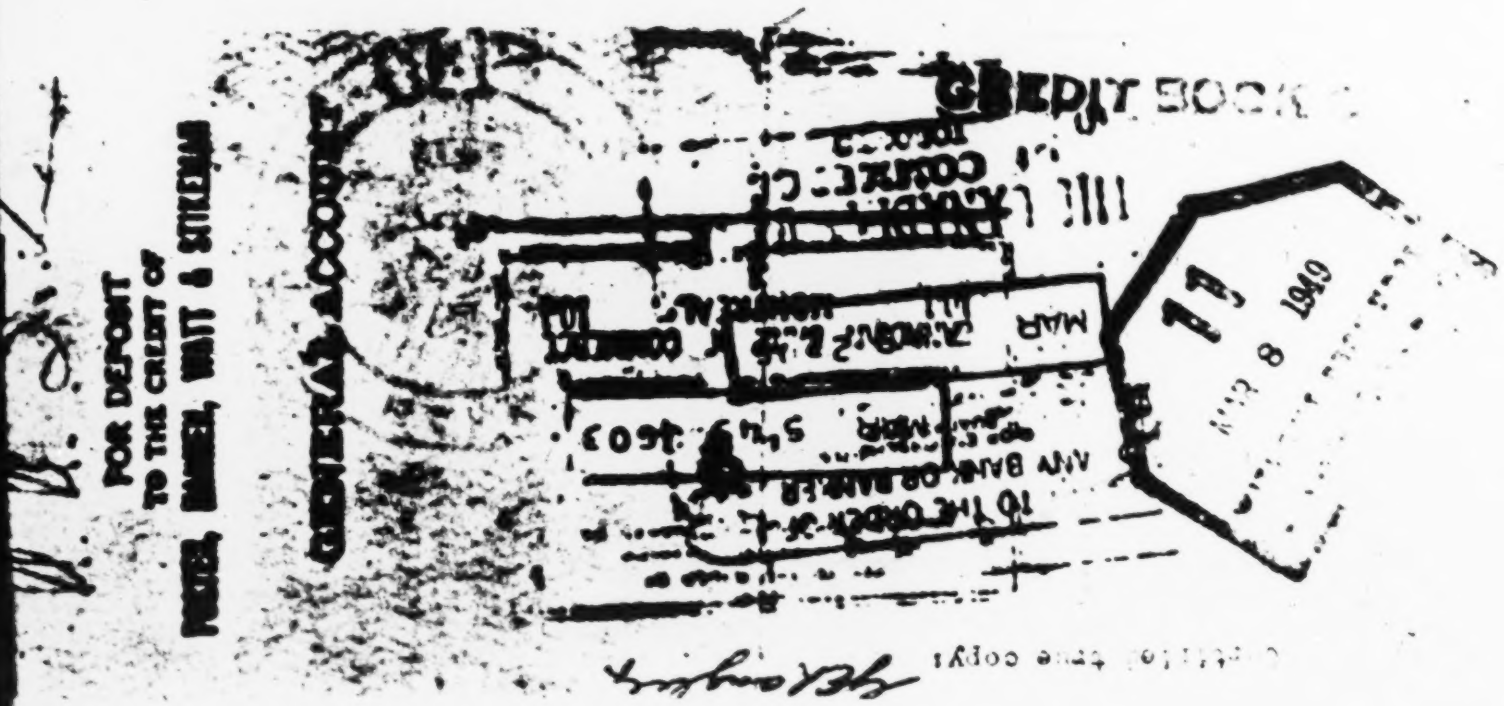
Government Exhibit 325

Government Exhibit 325



Government Exhibit 325





Government Exhibit 325

Certified true copy:
G. E. Langley.

Toronto, Ont. May 13, 1949 19 No

The Royal Bank of Canada

TORONTO BRANCH

U.S. FUNDS ACCOUNT

TELLER FOURTEEN
MAY 17 1949
THE ROYAL BANK OF CANADA
TORONTO, Ontario

Pay H. H. STIKEMAN $7,500.00

SEVEN THOUSAND FIVE HUNDRED AND 00/100 Dol

HANNES & COMPANY, LTD.

17 1949 PAYABLE BY DEMAND DRAFT ON NEW YORK

U. S. DOLLAR ACCOUNT

THE CANADIAN BANK OF COMMERCE
MAY 17 1949
CLEARED
NOTE
TELLER
TORONTO, - ONT.

MAY 17 1949

U. S. Dollar

FOR DEPOSIT
TO THE CREDIT OF
FOSTER, HANNEN, WATT & STIKEMAN

GENERAL ACCOUNT

PAY TO THE ORDER OF ICAZA
ANY BANK OR BANKER

Certified true copy:
G. E. Langley

Government Exhibit 325

Certified true copy: G. E. Langley

Toronto, Ont. May 2 1949 No

The Royal Bank of Canada

TORONTO BRANCH

11/2

538668

D.C. NEW YORK D.C.

PAID
FOURTEENTH YEAR
MAY 20 1949
THE ROYAL BANK OF CANADA
TORONTO, ONT.

A LOMBARDY ICARA Order $200.00

500.00

AND 00/100 Dollars

HANNA & COMPANY, LTD. S. A.

PAYABLE BY DEMAND DRAFT ON NEW YORK

President

FUNDS ACCOUNT

ANY BANK OR BANKER
MAY 18 1949
The Royal Bank of Canada
NEW YORK CITY

RECEIVED PAYMENT
MAY 18 1949
D.C. NEW YORK CITY
THE BANK OF CANADA
HEAD OFFICE

10990

G. E. Langley

Government Exhibit 325

G. E. Langley

Toronto, Ont. June 6, 1949 12

The Royal Bank of Canada

TORONTO BRANCH

U.S. FUNDS ACCOUNT

THE ROYAL BANK OF CANADA

Pay to the order of $30.00

HANNES & COMPANY, LTD. S. A.

HUNDR

PAYABLE BY DEMAND DRAFT ON NEW YORK

Preside

11 PAY TO THE ORDER OF 11/2 ANY BANK OR BANKER

THE ROYAL BANK OF CAN

TORONTO, ONT.

G. E. Langley

Government Exhibit 325

G. E. Langley Toronto, Ont. March 25, 1950

U. S. FUNDS

The Royal Bank of Canada

11/2

PAID

MAR 28 1950

MAR 30 1950

Pay THE ROYAL BANK OF CANADA ... $150,000.00

... HUNDRED FIFTY THOUSAND AND 00/100 ... Dollars

... & COMPANY, LTD. N. A.

PAYABLE BY DEMAND DRAFT ON NEW YORK

President

Certified true copy:

Government Exhibit 325

Government Exhibit 325

G. E. Langley

The Royal Bank of Canada
TORONTO 1, ONT.

Hannes & Co Ltd

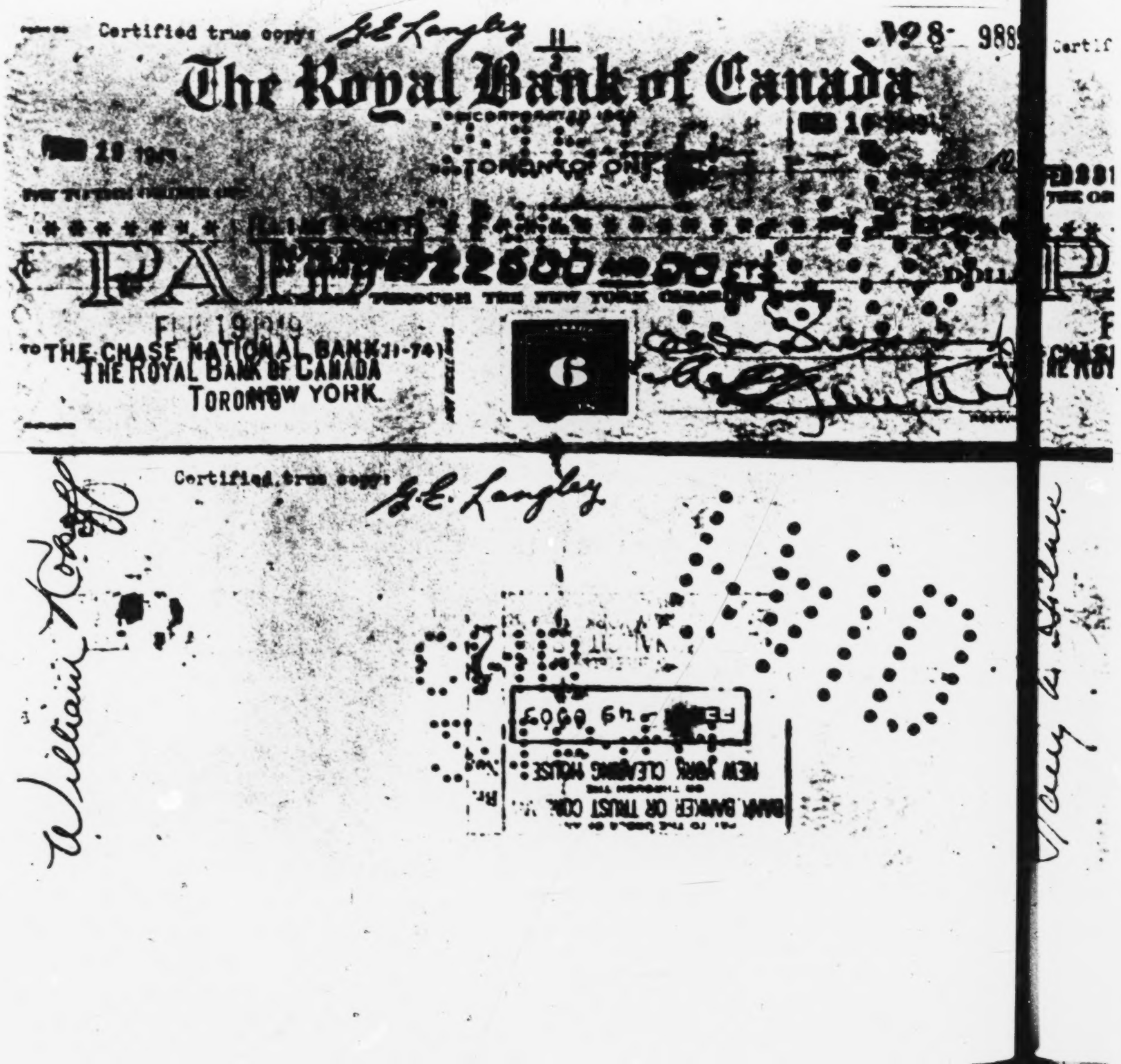
We have charged to your account the following items:

ITEM	NAME	AMOUNT
U.S.	Funds	
Royal Bank		150,000.00

PAID
TELLER FOUNDER
FUNDS
ACCOUNT

ADVICE ONLY

Government Exhibit 325



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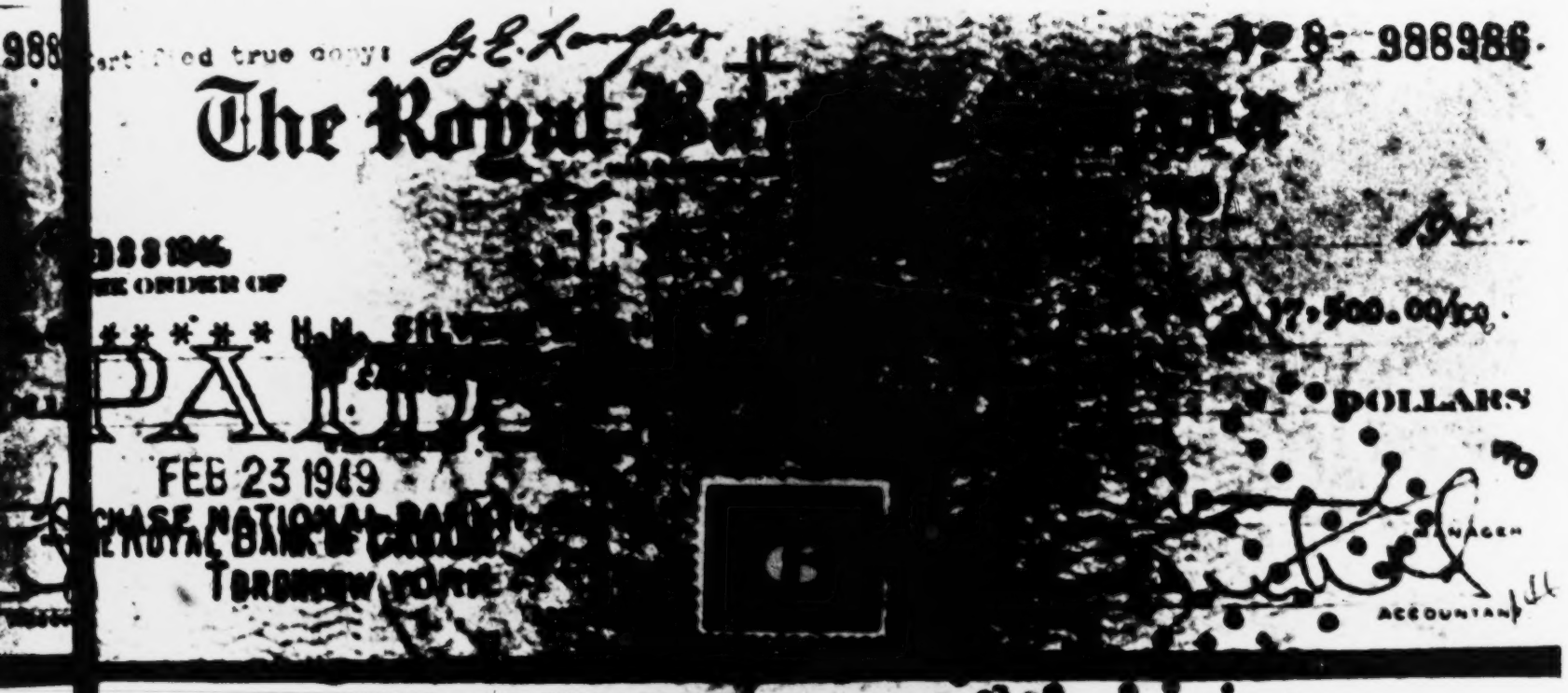
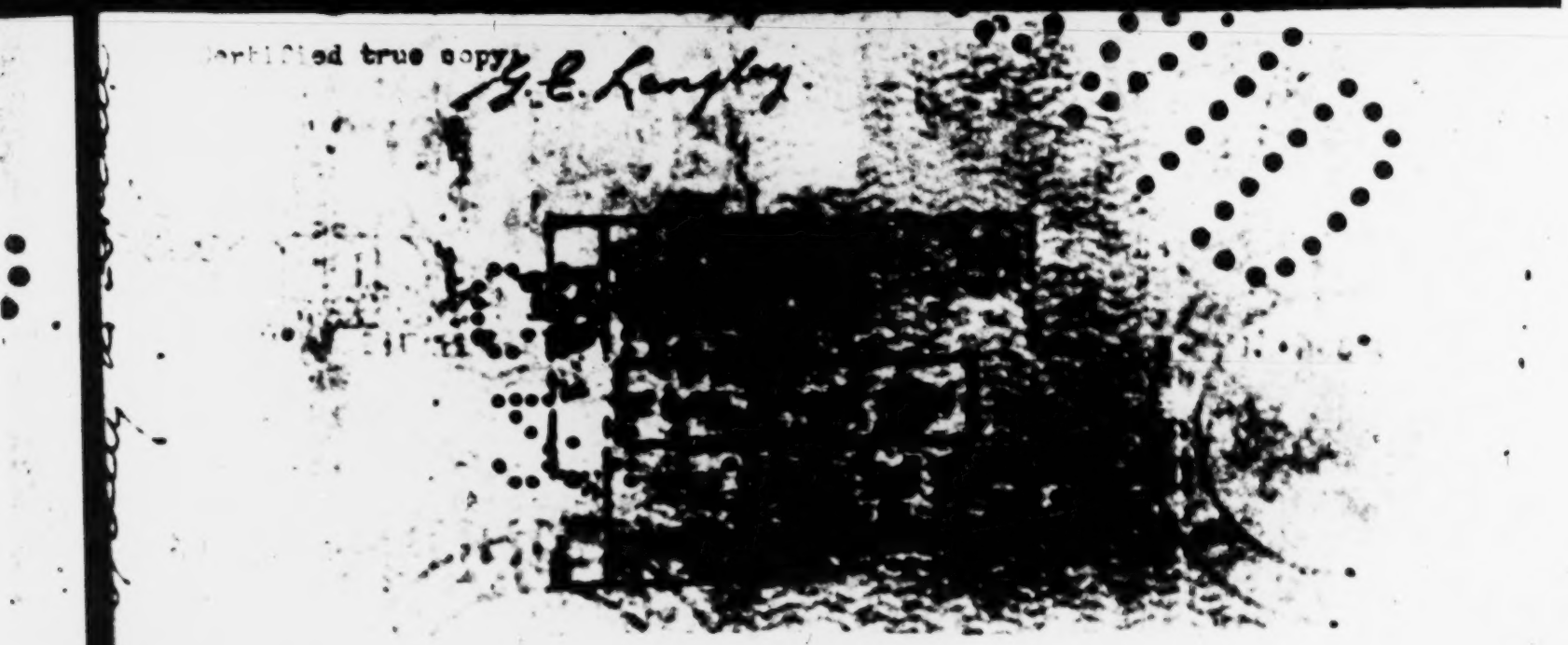




Government Exhibit 325

Certified true copy G. E. Langley II

The Royal Bank of Canada

INCORPORATED 1869

JAN 12 1949

TORONTO, ONT. FEB 10 1949

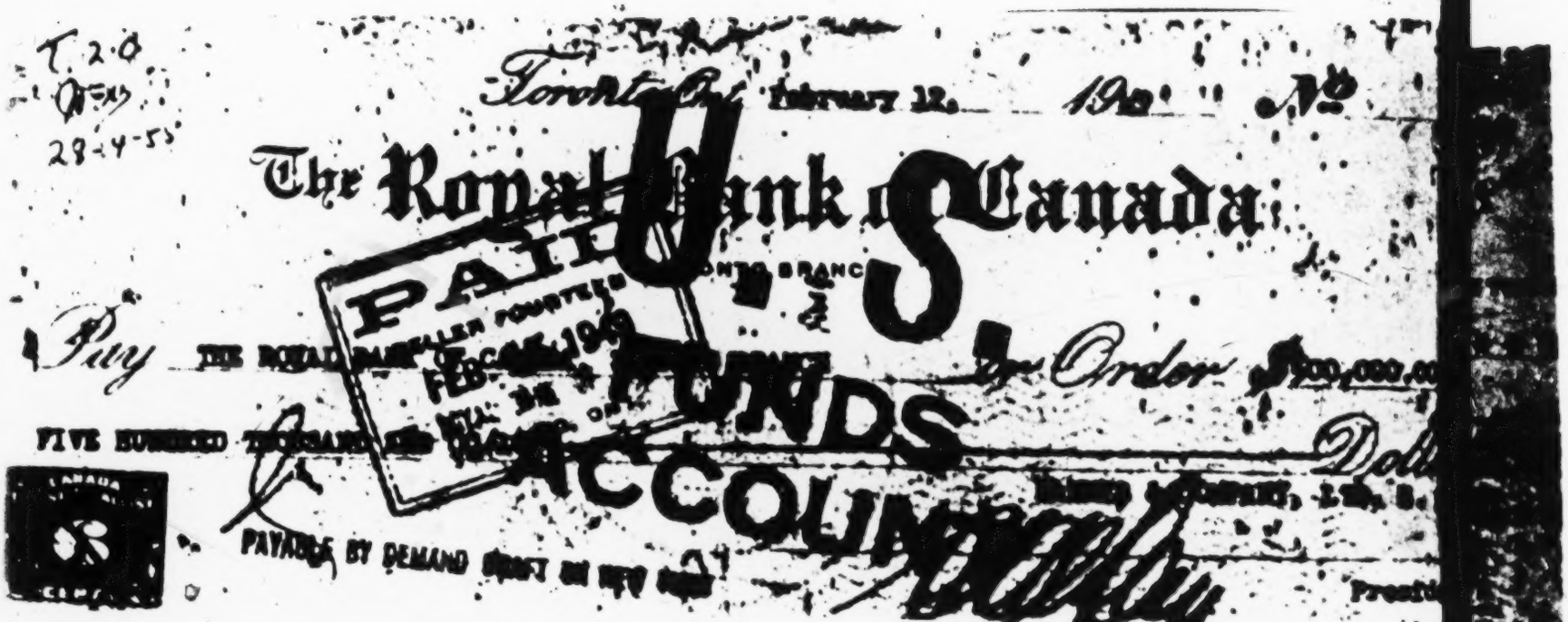
PAY TO THE ORDER OF

***

Government Exhibit 325

above drafts were issued for Hannes & Co. Ltd. check dated Feb. 1, 1949
the amount of $46,195.00.

Government Exhibit 325



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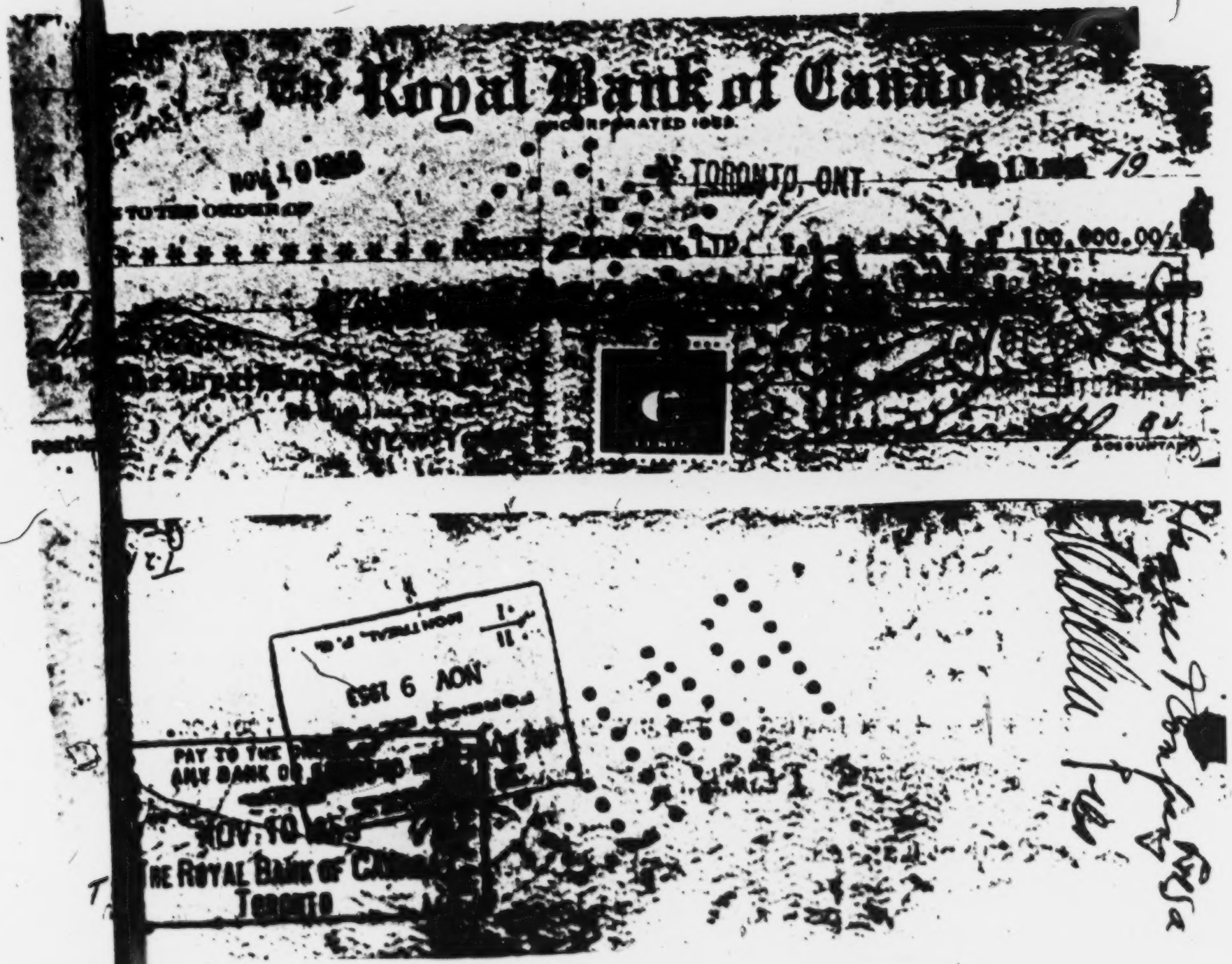

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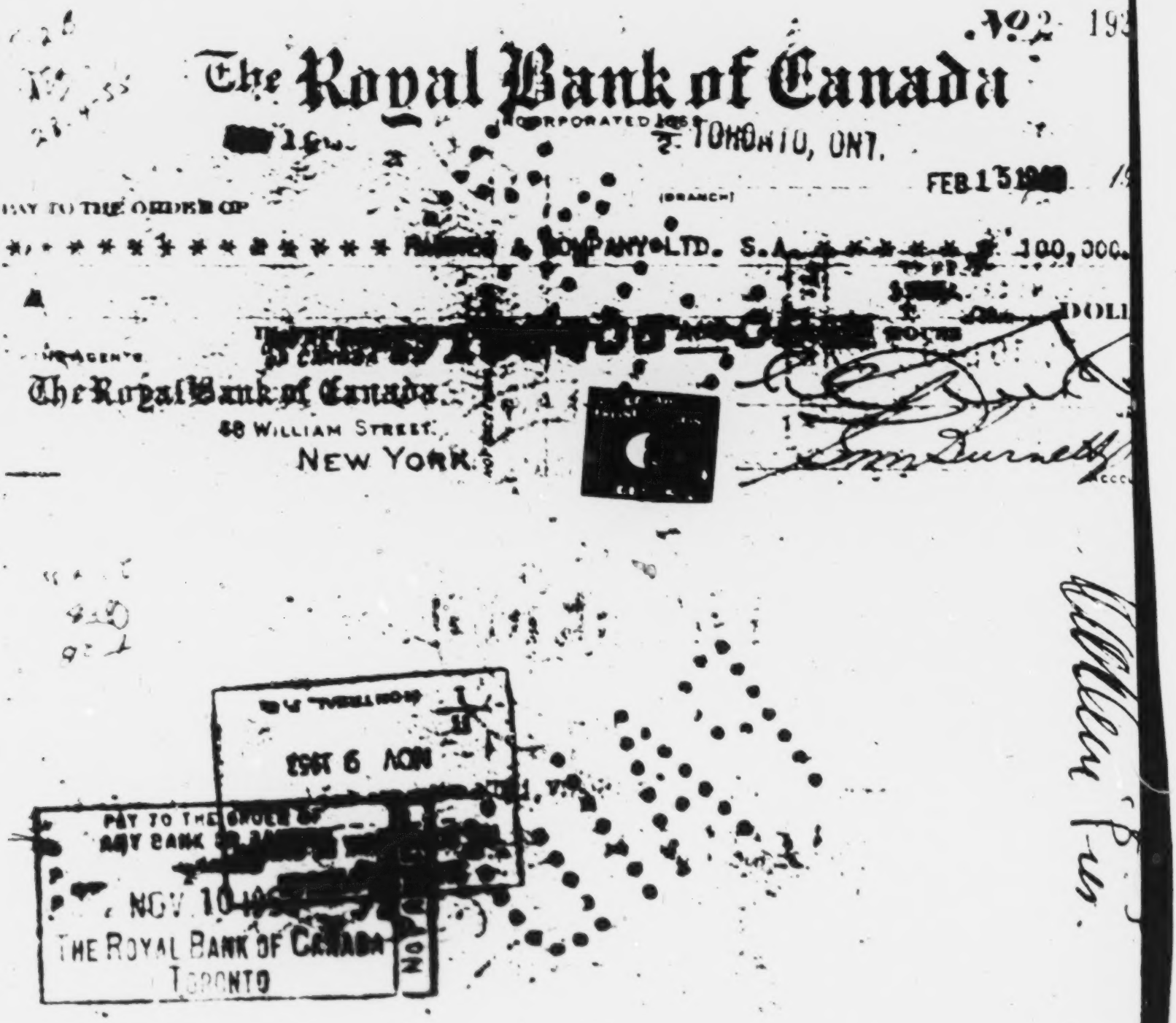

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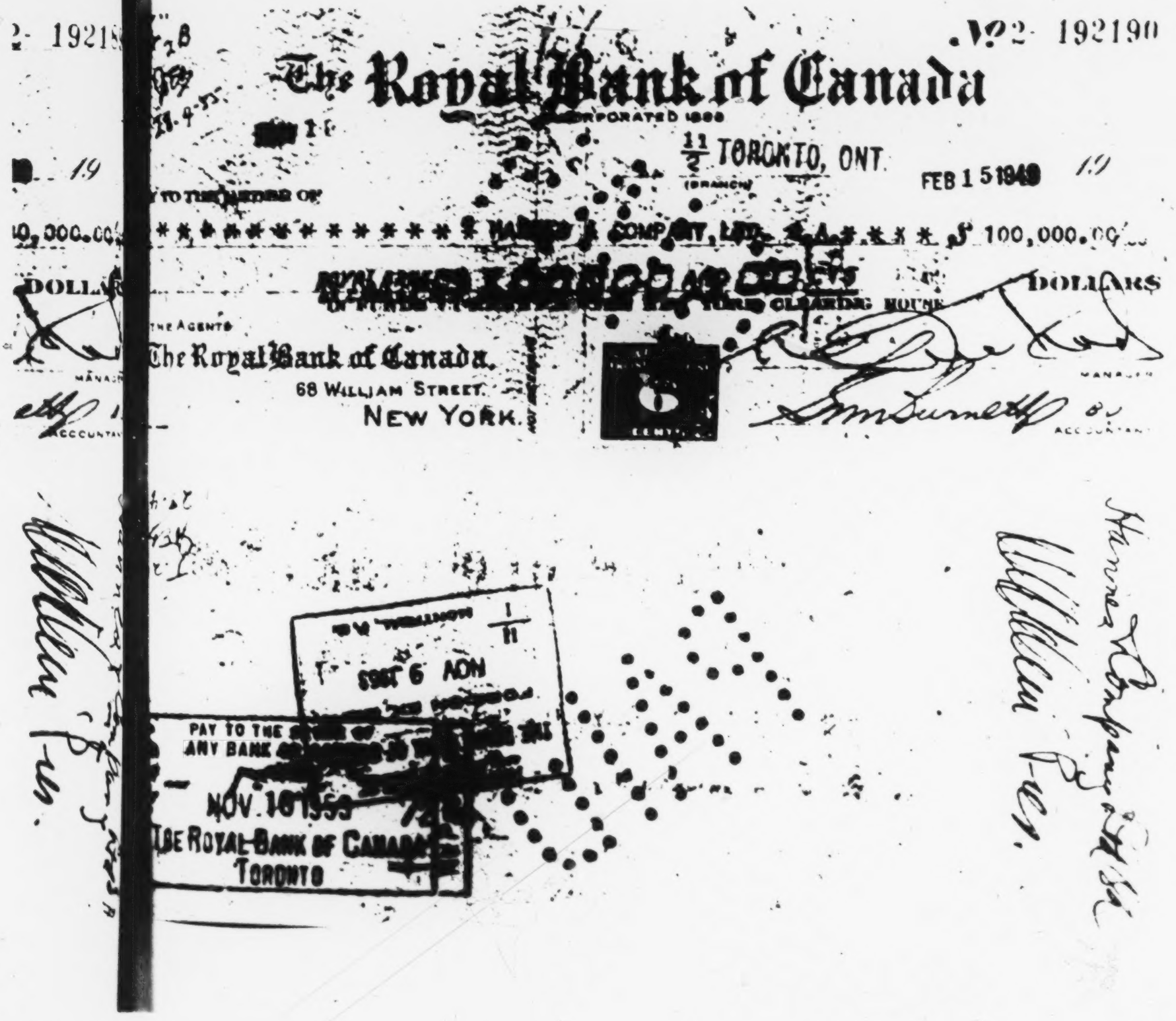

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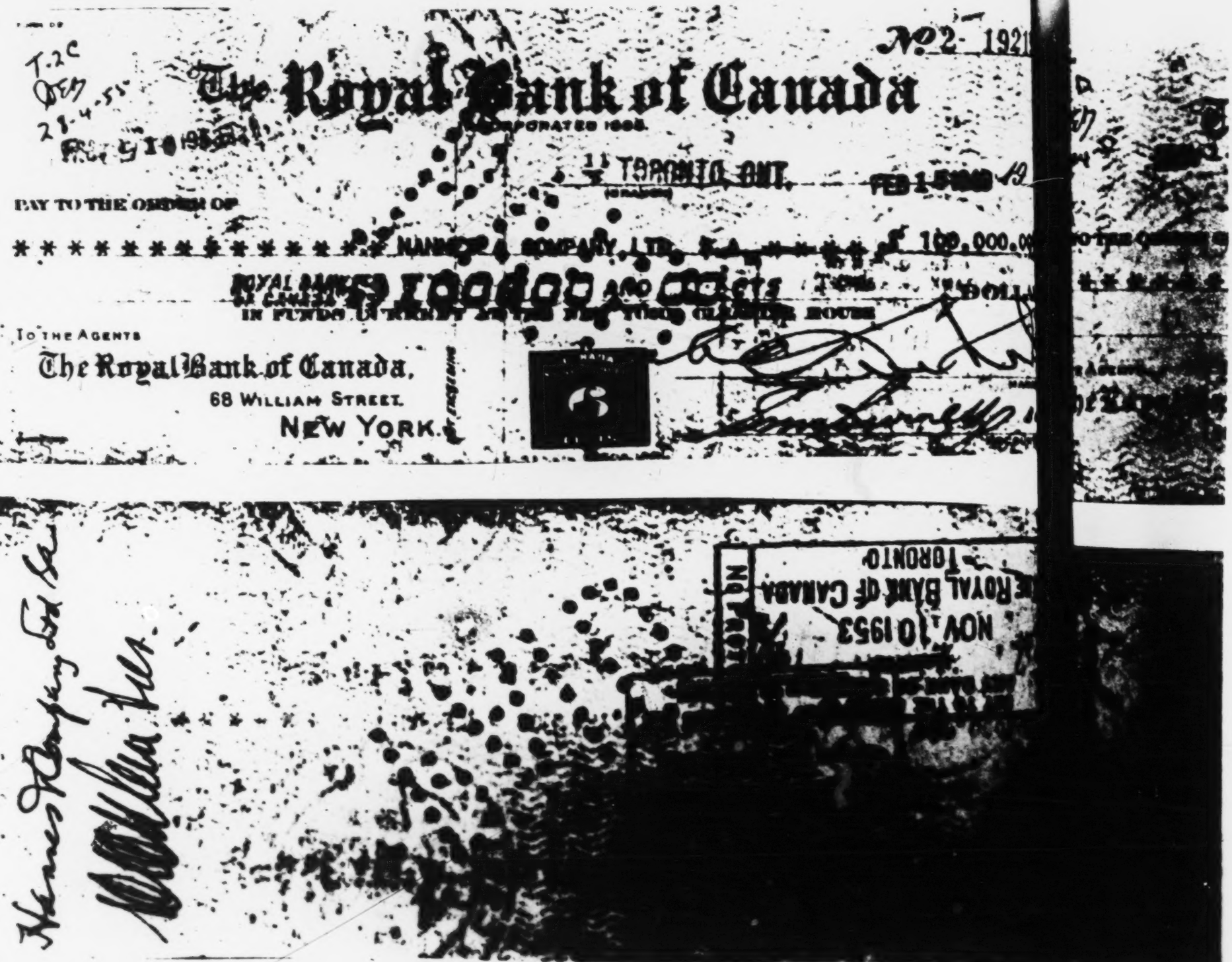

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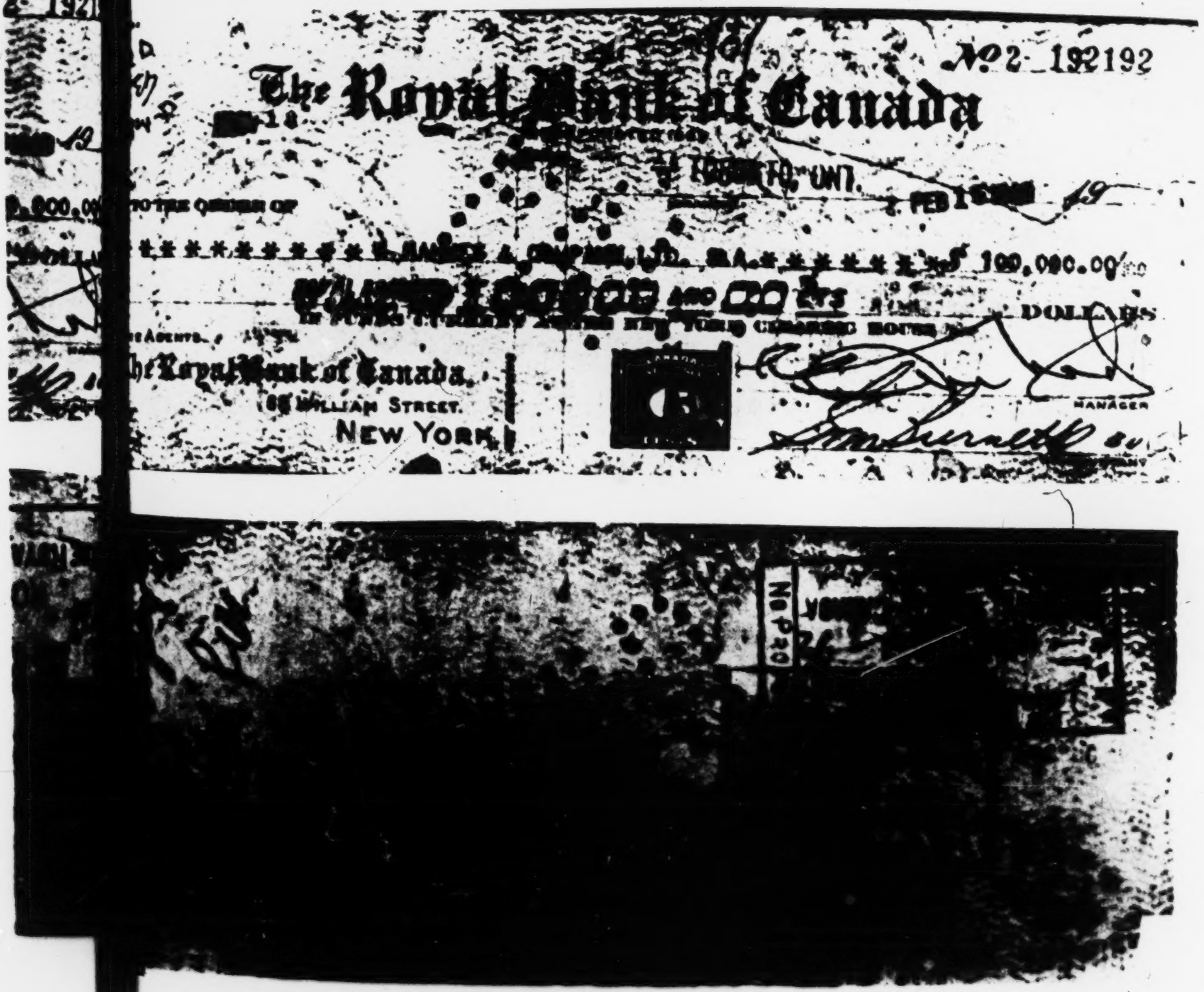

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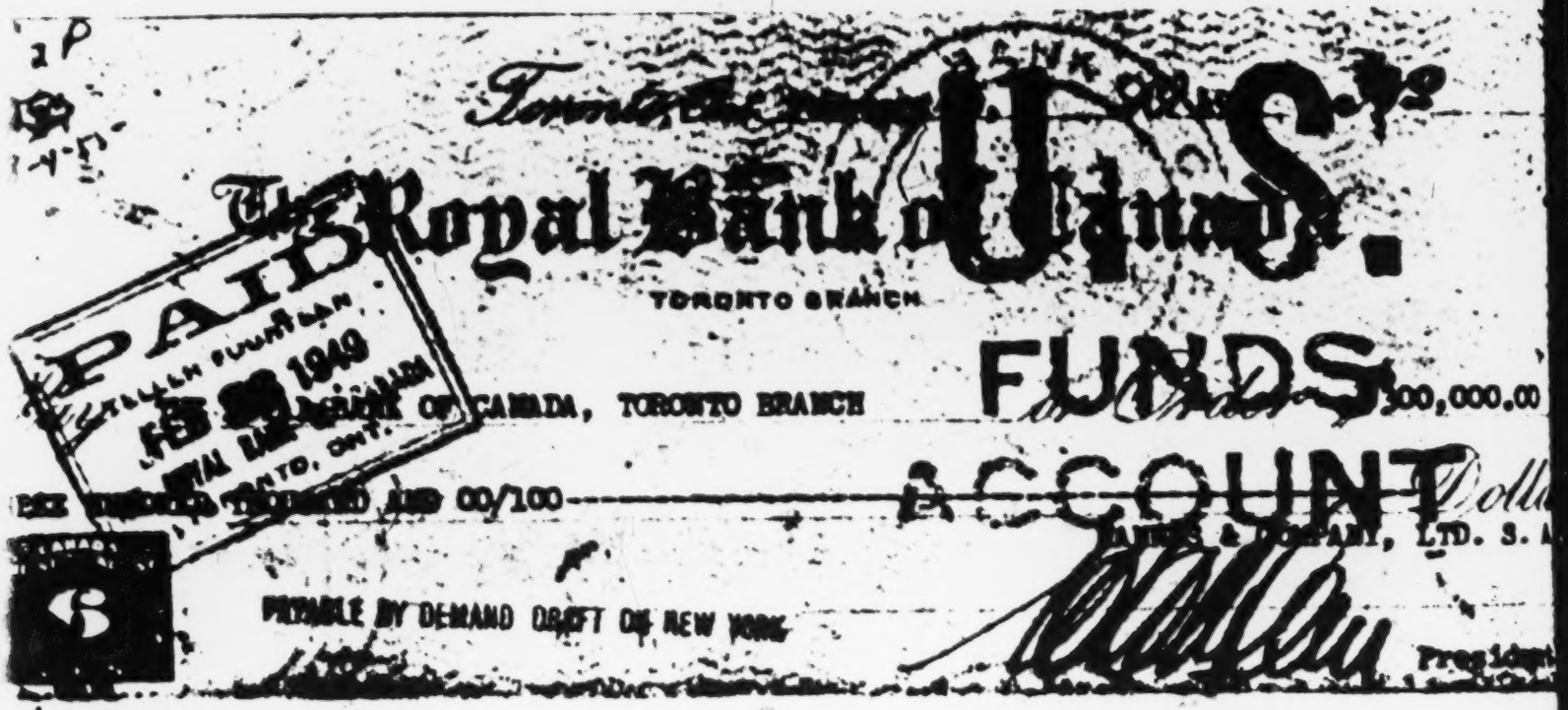

Government Exhibit 325

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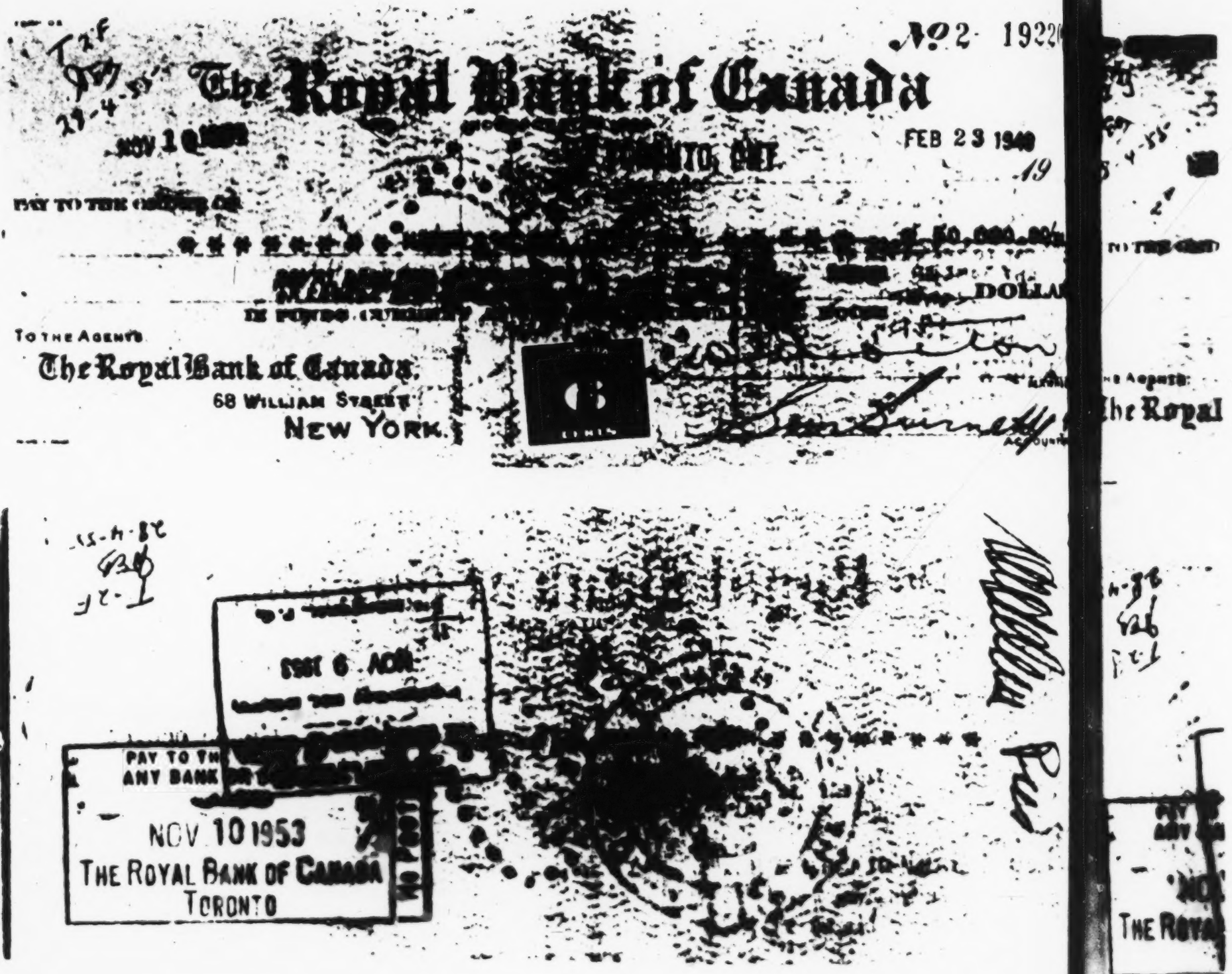

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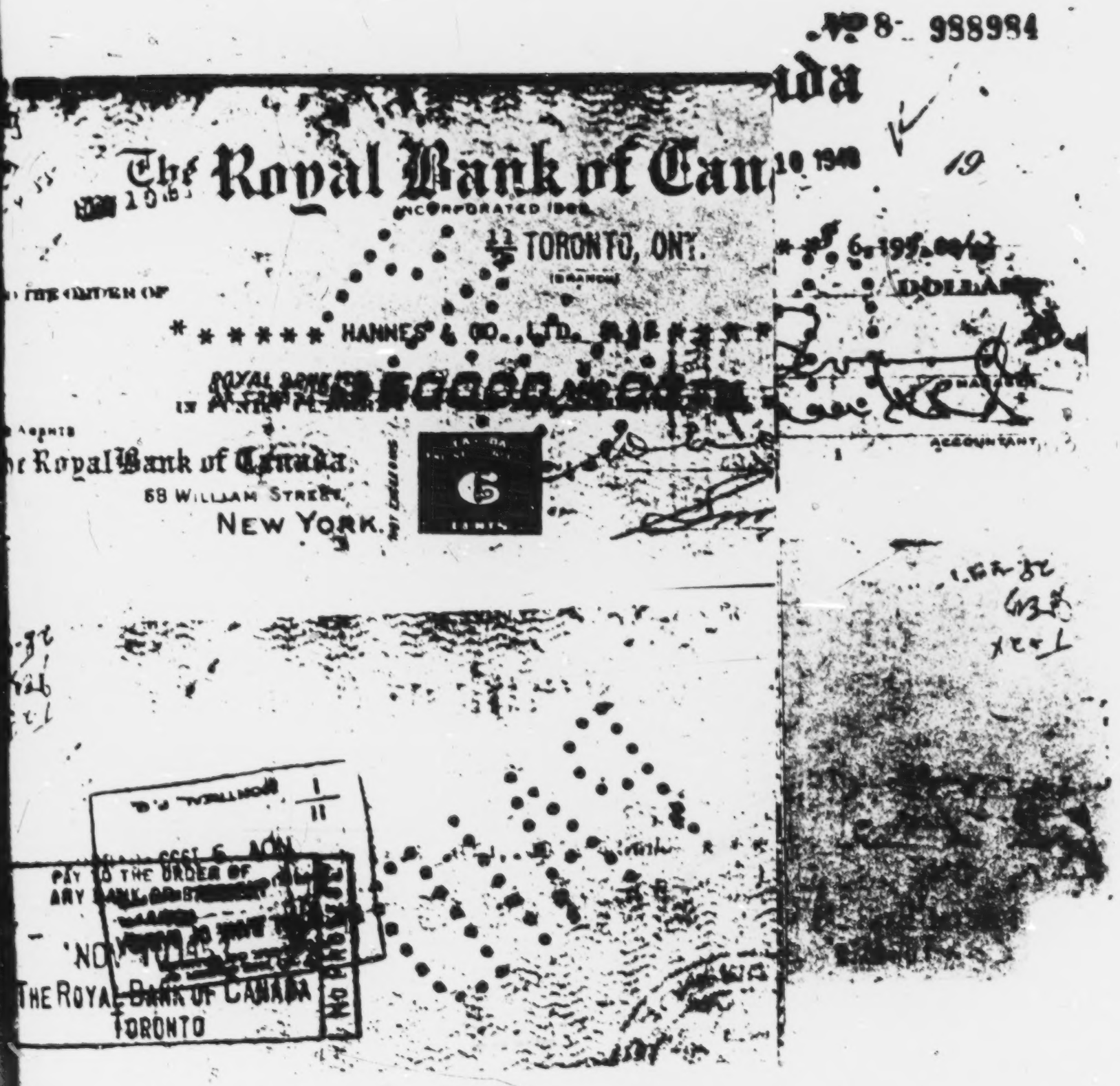


Government Exhibit 325

No 2 1922

The Royal Bank of Canada

INCORPORATED 1869

11/2 TORONTO, ONT.

FEB 23 19

TO THE ORDER OF

* * * * * * * * * HANDLES & CO. LTD. * * * * * * * * * $ 50,000.00

ROYAL BANK OF CANADA $ 50000 AND 00 CTS DOLLA

IN FUNDS CURRENT AT THE NEW YORK CLEARING HOUSE

THE AGENTS

The Royal Bank of Canada.

68 WILLIAM STREET

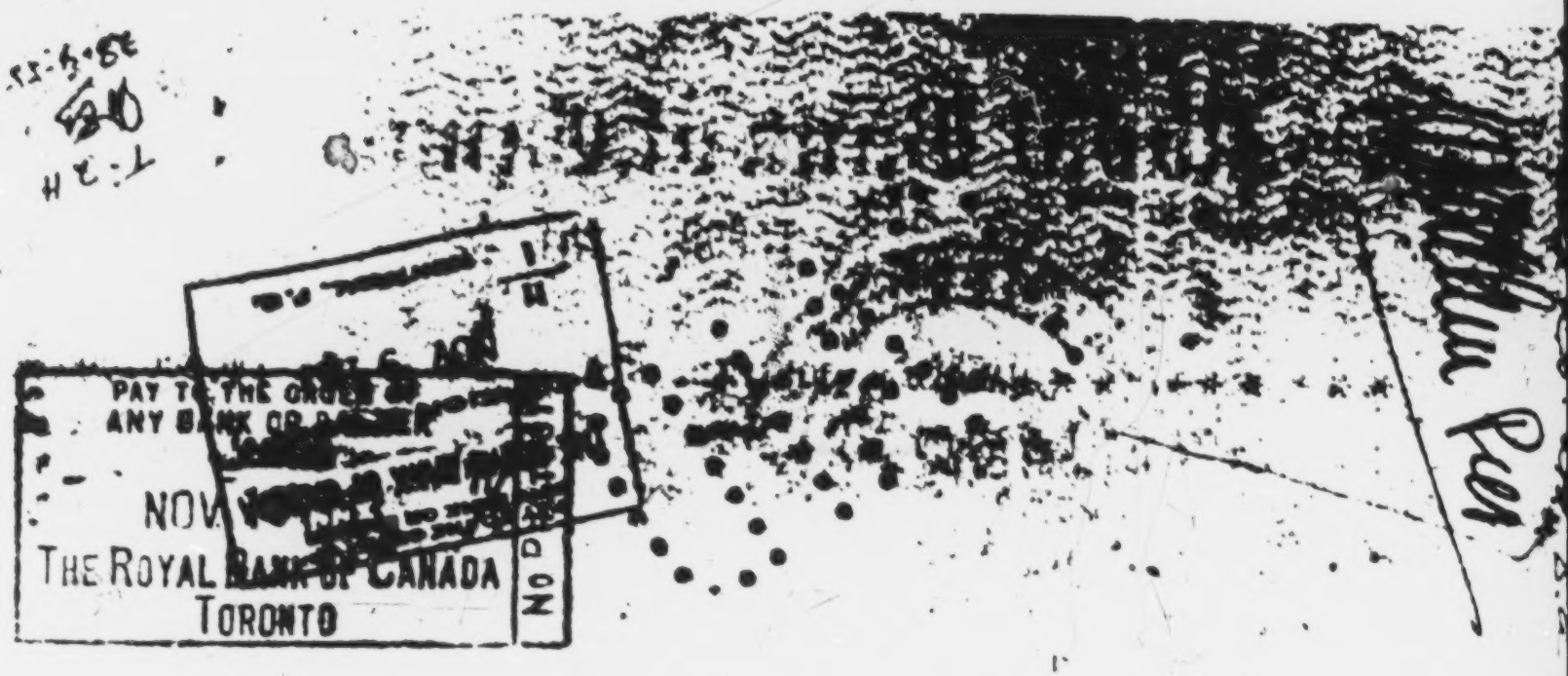
NEW YORK.

PAY TO THE ORDER OF ANY BANK OR BANKER

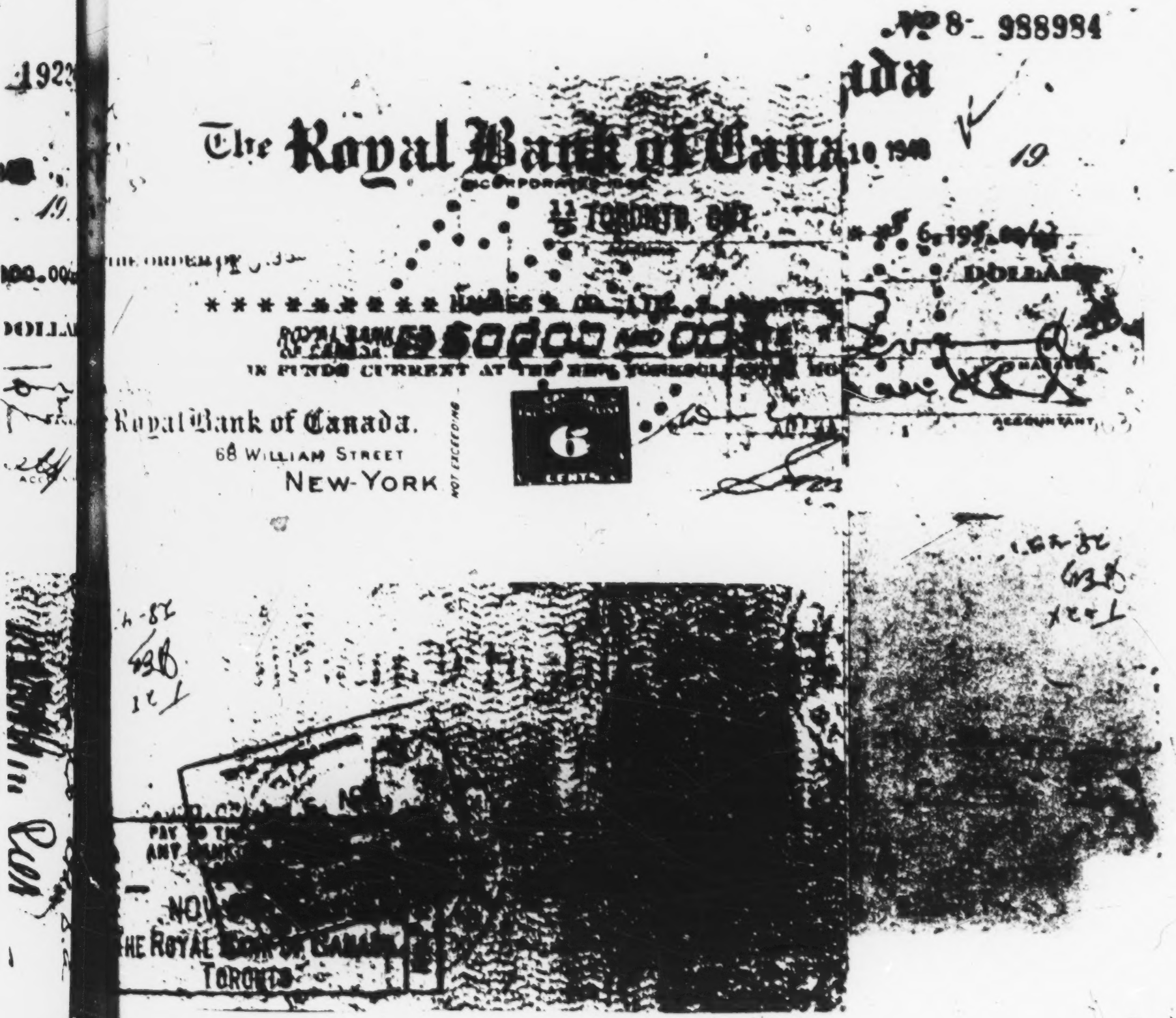
NOV

THE ROYAL BANK OF CANADA

TORONTO



Government Exhibit 825



Government Exhibit 325

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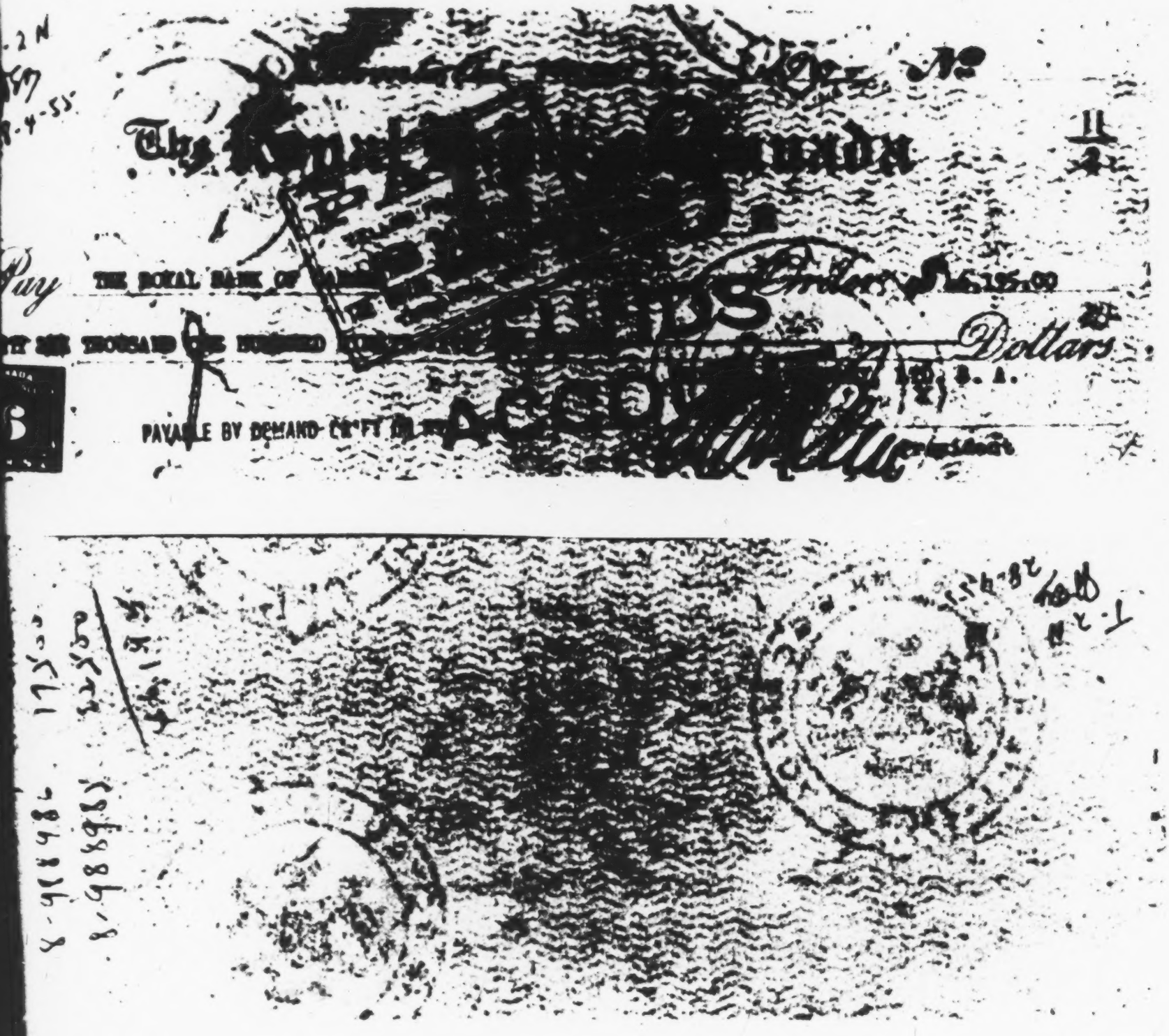

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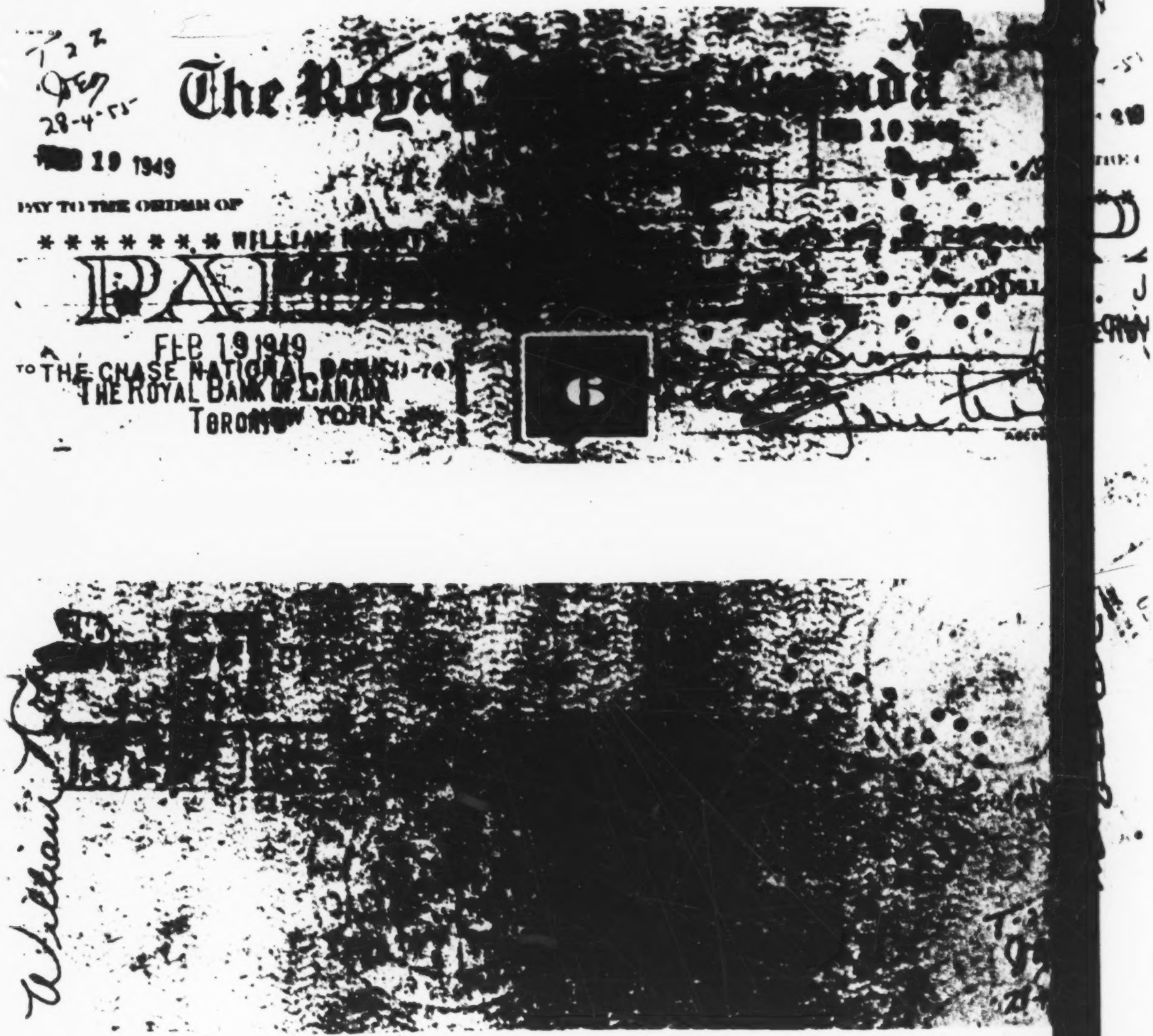
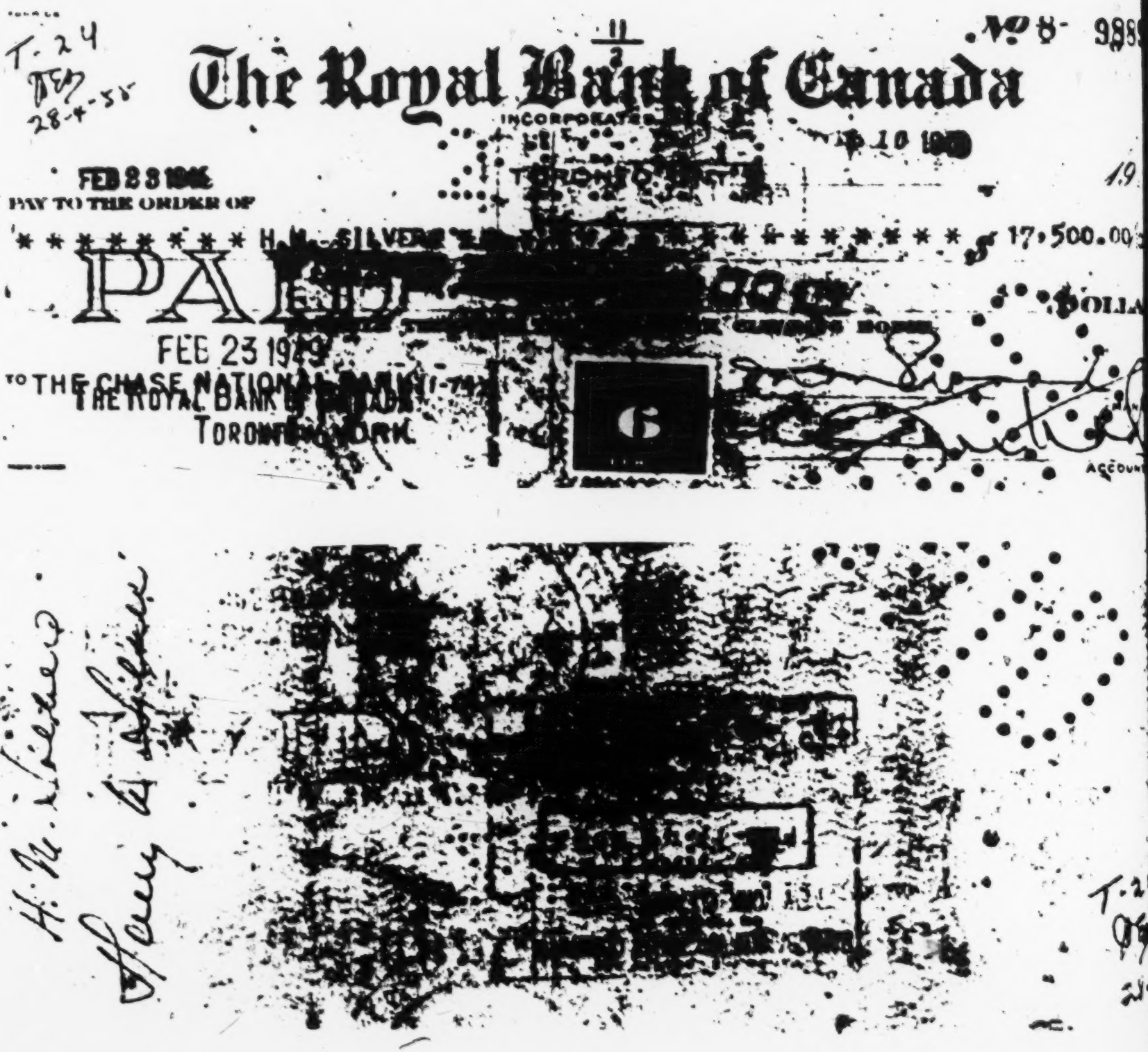


Government Exhibit 325

Government Exhibit 325



Government Exhibit 333

GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 31 1950

LA IMPORTADORA MARTE, S. A.

THE ROYAL BANK OF CANADA

TORONTO, ONTARIO

Government Exhibit 333

NAME OF COMPANY LA IMPORTADORA MARTE S A ACCOUNT NUMBER

AUTHORIZED SIGNATURES

S. F. Alarin Pres.

Morris Chepren Treas.

MAY 10 1947

DATE

IF NECESSARY CONTINUE SIGNATURES ON REVERSE

NAME LA IMPORTADORA MARTE S.A. TELEPHONE NO.

OCCUPATION General Trading OTHER CONNECTIONS

ADDRESS c/o W. W. Davies,

193 Robert Street,

Toronto, Ontario.

Cleared

DATE OF FIRST INQUIRY AND BY WHOM ANSWERED

BY WHOM INTRODUCED AND OR REFERENCES

ACCOUNTS OPENED	DATE OPENED	AMOUNT	DATE CLOSED	Foreign Exchange

NAME [redacted]

ACCOUNT NUMBER IF SAVINGS

DATE	FORM No.	PARTICULARS	INITIALS
[illegible] 5 47		Certified copy of Directors Resolution authorising the undersigned to sign cheques, notes, etc., endorse for deposit & verify the account: President or the Treasurer Any one of the above may in writing appoint any officer or employee to receive said cheques and vouchers and sign bank's form of settlement & release.	
May 5 47	Le 16	Waiver	
	290	Certified list of Officers & Directors: OFFICERS President - Glory J. Alprin Treasurer - Morris Alprin Secretary - Alberto Valverde Abril Asst-Secy - M. M. Davis DIRECTORS Morris Alprin S. F. Alprin Glory J. Alprin	

TORONTO

The Manager,
The Royal Bank of Canada.
Toronto 1, Ont.

Dear Sir:

We certify that the officers of

are as follows:

and that the following are the directors of the company:

We hereby undertake to notify you of any change in the directorate and/or officers of the Company, to furnish specimen signatures and until you receive written notification, you may assume for the purpose of conducting the bank account that the above named are the officers and directors of the Company and in charge of its affairs.

Yours truly,

(SEAL)

President.

Asst Secretary.

Government Exhibit 333"

I, [illegible] Assistant Secretary of LA IMPORTADORA MARTE, S. A., in English MARTE IMPORT CORPORATION, a corporation duly organized and existing under the laws of the Republic of Cuba,

DO HEREBY CERTIFY: That the following is a true and correct copy of a Resolution duly adopted by the Board of Directors of said Corporation at a meeting duly called and held at Royal Ont. Hotel Toronto, Canada, on the 5th day of ~~March~~ May 1947, at which a quorum was present and all legal requirements were strictly observed;

"RESOLVED That the Royal Bank of Canada Toronto, Canada (hereinafter called the Bank), be and hereby is designated depository of the funds of LA IMPORTADORA MARTE, S. A., in English MARTE IMPORT CORPORATION, and that the President or Treasurer of said Corporation be and hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corporation with the Bank, and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders in favor of the above designated officers or any other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and the Bank is hereby further authorized to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation, any and all checks, drafts, notes or other instruments for the payment of money, whether or not endorsed by this Corporation, and that such items shall be deemed to have been all qualifiedly endorsed by this Corporation, and also to receive as the act of this Corporation, reconcilments of accounts when signed by the above designated officers of their appointee; and be it

"FURTHER RESOLVED that the President or Treasurer of this Corporation be and are hereby authorized for and on behalf of this Corporation to transact any and all such business with or through the Bank at any time as may be deemed necessary by said officers, and in reference to any of the businesses hereinbefore referred to, to make, enter into, execute and deliver to the Bank such documents as to such officers may seem to be necessary or desirable; any and all the withdrawals of money and/or transactions heretofore had in behalf of this corporation with the Bank, being hereby ratified, confirmed and approved.

"FURTHER RESOLVED that the President or Treasurer may, in writing, appoint from time to time such officer or employee of the Company as may be deemed advisable for the purpose of receiving all paid checks and vouchers and/or signing and delivering to the Bank the Bank's form of settlement of balances and release."

I FURTHER CERTIFY: That Sadie Alprin, President, and Morris Alprin, Treasurer, now occupy the offices designated in the above quoted resolution for which they were elected and that I, the undersigned, also occupy the office of Assistant Secretary, for which I was duly elected and that we are duly qualified as such officers.

I ALSO FURTHER CERTIFY: That LA IMPORTADORA MARTE, S. A., in English MARTE IMPORT CORPORATION, is duly organized under the laws of the Republic of Cuba, and has the power to take the action called for by the Resolution hereinbefore transcribed; as well as that no action has been taken to rescind or amend the foregoing, which is all in full force and effect at the present time.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 5th day of ~~March~~ May 1947.

[illegible]

[illegible] Assistant Secretary.

[illegible] ROYAL BANK OF CANADA [illegible] referred to as the "Bank") negotiating for or [illegible] from the undersigned, bills of [illegible] orders for the payment of money, coupons, [illegible] or other instruments or securities whether or not

In consideration of THE ROYAL BANK OF CANADA (hereinafter referred to as the "Bank") negotiating for or taking on deposit or for collection or as collateral security or otherwise from the undersigned, bills of exchange, drafts, promissory notes, bank and express money orders or other orders for the payment of money, coupons, tickets pertaining to the purchase of grain, livestock and other produce, or other instruments or securities whether or not the undersigned is a party thereto (the whole hereinafter referred to as "instruments", which shall be deemed to include instruments drawn on any branch of the Bank), the undersigned hereby agrees with the Bank as follows:

(1) That presentment, notice of dishonour, protest and notice of protest of all instruments is hereby waived unless the Bank receives at or prior to maturity special written instructions to the contrary from the undersigned in respect of any specified instrument or instruments, and that, subject to any special written instructions, the undersigned shall be responsible and liable to the Bank on all instruments in the same manner and to the same extent as if the instruments had been duly presented and protested and notice of dishonour and notice of protest given as regards all parties thereto as required by any law applicable thereto, and that any person (other than a member of the Bank's staff) employed by the Bank to carry out any such special written instructions shall be deemed to be the agent of the undersigned.

(2) That the Bank is authorized to present for payment or acceptance or collect the instruments through such banks or other agents as the Bank may deem best, at the sole risk and expense of the undersigned, and, save to the extent that definite instructions have been received by the Bank from the undersigned, to give to or withhold from such banks or other agents such instructions as to collection as the Bank may deem best, and that the Bank may accept either cash or bank drafts, cheques, settlement vouchers, clearing house slips or any other evidence of payment, in payment of the instruments or in remittance therefor.

(3) That the undersigned will indemnify the Bank against all claims made against the Bank and/or liability incurred by the Bank under any law having effect within the jurisdiction where any of the instruments are or may be payable, including, but without limiting the generality of the foregoing, any claim and/or liability which may arise by reason of the endorsement of the Bank or any branch or agency thereof and also against all claims and/or liability arising with respect to tickets pertaining to the purchase of grain, livestock and other produce whether by reason of forgery thereof or unauthorized signatures thereon or otherwise.

(4) That the Bank is authorized to debit the account of the undersigned with any of the instruments, or any of the proceeds of payment referred to in Section (2) hereof, which are not paid on presentation or which if paid the Bank may be called upon to refund, or which may be dishonoured by non-acceptance or non-payment or any party to which is bankrupt or insolvent, or which, or the proceeds of which, through no fault of the Bank have been lost, stolen or destroyed or which, or the proceeds of which, for any reason the Bank is unable to collect or withdraw, together with all costs, charges and expenses incurred by the Bank in connection therewith; and to debit the account of the undersigned with any cheques drawn on the branch of the Bank at which the account of the undersigned is being carried and which have been cashed, negotiated or credited to the account of the undersigned but which have not been found good.

(5) That the Bank is authorized to pay as in the case of an ordinary cheque and debit the account of the undersigned in the usual manner with every promissory note or acceptance of the undersigned presented for payment at the branch of the Bank at which the account of the undersigned is being carried.

(6) That the undersigned will repay to the Bank all amounts debited to the account of the undersigned in accordance with the provisions of this agreement.

(7) That should the undersigned conduct an account or accounts at more than one branch of the Bank, the provisions of this agreement shall apply to each of such accounts unless the undersigned gives the Bank special written instructions to the contrary designating the particular account or accounts to which the provisions of this agreement shall not apply.

(8) That this is to be a continuing consent and agreement and shall bind the undersigned and the heirs, executors, administrators, successors and assigns of the undersigned.

Dated at Toronto Canada this 5th day

of May 19 67

La Importadora Harte S.A.

by Mario Olivera Treas.

EXAMINED

FOR ACCOUNTANT

5 1967

N.B.—This agreement binds only the party by whom it is signed. It does not affect the rights of other persons who are parties to the items. The agreement does not apply to items drawn or endorsed by the customer which are lodged by other parties.

NAME

ADDRESS

OCCUPATION

PHONE No.

FORMS HELD

SHEET No

619 Spadina ave

RA 9533

1947

CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD			
	95,000.00	NOV 5	95,000.00

INSPECTION 1948

95,000.00-

1949 Vacation

FEB 28

.00

Government Exhibit 333

THE ROYAL BANK OF CANADA

NEW ACCOUNT

May 5, 19 47

CREDIT

LA IMPORTADORA MARTE, S.A.

General Trading ACCOUNT

% M. M. Davis, 193 Robert St.

Toronto.

CASH

CHEQUES

SILVER

COPPER

TOTAL

Government Exhibit 334

GOVERNMENT'S

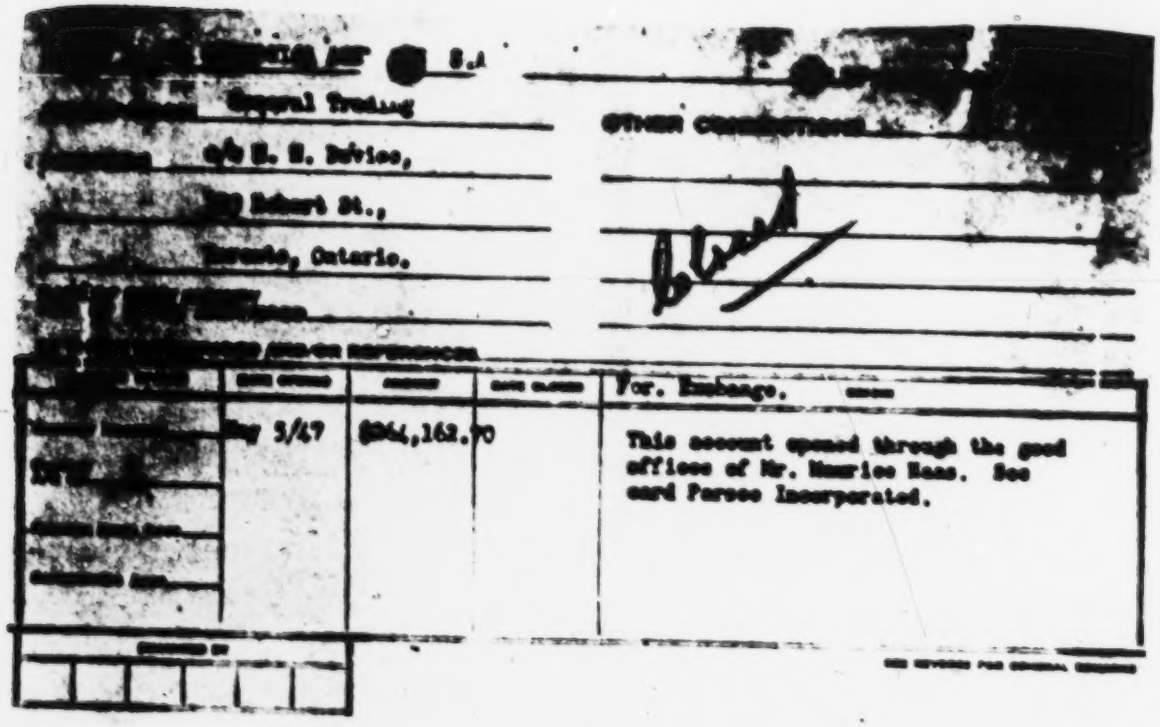
L/

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 31 1955

LA ECONOMICA AGENCIAS, S.A

THE ROYAL BANK OF CANADA,

TORONTO, ONTARIO



LA ECONOMICA AGENCIAS S.A.

ACCOUNT NUMBER IF SAVINGS

NAME [redacted] S.A.

DATE	FOLIO No.	PARTICULARS	INITIALS
		No Borrowing Power	
May 5 47		Certified copy of Directors Resolution authorizing the undersigned to sign checks, drafts, etc., to borrow for deposit & certify the account: President or the Treasurer Any one of the above may in writing appoint any officer or employee to receive paid checks and vouchers and sign bank's form of settlement & release.	
May 5 47	Le 36	Silver	
	290	Certified list of Officers & Directors: OFFICERS: President - Glory J. Algrir; Treasurer - Morris Algrir; Secretary - Alberto Valverde Abril; Asst-Secy - M. M. Davis. DIRECTORS: Morris Algrir; S. F. Algrir; Glory J. Algrir	

(PRES. SEC. TREAS.)

TORONTO May 5, 1947

The Manager,
The Royal Bank of Canada,
Toronto 1, Ont.

Dear Sir:

We certify that the officers of La Economica Agencias S.A.

are as follows:

Glory J. Alprin Pres
Morris Valprin Treas
Alberto Valverde Abril Secy
M. M. Davis Asst Secy

EXAMINED
PRES. MANAGER | PRES. SECRETARY

and that the following are the directors of the Company

Morris Valprin
S. F. Alprin
Glory J. Alprin

We hereby undertake to notify you of any change in the directorate and/or officers of the Company, to furnish specimen Signatures, and until you receive written notification, you may assume for the purpose of conducting the bank account that the above named are the officers and directors of the Company and in charge of its affairs.

Yours truly,

Morris Valprin
Treas President.

M. M. Davis
Asst. Secretary.

(SEAL)

ADD [illegible]

I, W. M. Davis Assistant Secretary of LA ECONOMICA AMERICAS, S. A., in English ECONOMIC AMERICAS, INC., a corporation duly organized and existing under the laws of the Republic of Cuba,

DO HEREBY CERTIFY: That the following is a true and correct copy of a Resolution duly adopted by the Board of Directors of said Corporation at a meeting duly called and held at Royal York Hotel Toronto, Canada, on the 5th day of March, 1947, at which a quorum was present and all legal requirements were strictly observed:

"RESOLVED That the The Royal Bank of Canada Toronto, Canada (hereinafter called the Bank), be and hereby is designated depositary of the funds of LA ECONOMICA AMERICAS, S.A., in English ECONOMIC AMERICAS, INC., and that the President or Treasurer of said Corporation be and hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corporation with the Bank, and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders in favor of the above designated officers or any other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and the Bank is hereby further authorized to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation, any and all checks, drafts, notes or other instruments for the payment of money, whether or not endorsed by this Corporation, and that such items shall be deemed to have been all qualifiedly endorsed by this Corporation, and also to receive as the act of this Corporation, receipts or accounts when signed by the above designated officers or his appointee; and be it

"FURTHER RESOLVED that the President or Treasurer of this Corporation be and are hereby authorized for and on behalf of this Corporation to transact any and all such business with or through the Bank at any time as may be deemed necessary by said officers, and in reference to any of the businesses hereinbefore referred to, to make, enter into, execute and deliver to the Bank such documents as to such officers may seem to be necessary or desirable; any and all the withdrawals of money and/or transactions heretofore had in behalf of this corporation with the Bank, being hereby ratified, confirmed and approved.

"FURTHER RESOLVED that the President or Treasurer may, in writing, appoint from time to time such officer or employee of the Company as may be deemed advisable for the purpose of receiving all paid checks and vouchers and/or signing and delivering to the Bank the Bank's form of settlement of balances and release."

I FURTHER CERTIFY: That Glory Algrin, President, and Morris Algrin, Treasurer, now occupy the offices designated in the above quoted resolution for which they were elected and that I, the undersigned, also occupy the office of Assistant Secretary, for which I was duly elected and that we are duly qualified as such officers.

I AND FURTHER CERTIFY: That LA ECONOMICA AMERICAS, S. A., in English ECONOMIC AMERICAS, INC., is duly organized under the laws of the Republic of Cuba, and has the power to take the action called for by the Resolution hereinbefore transcribed; as well as that no action has been taken to rescind or amend the foregoing, which is all in full force and effect at the present time.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 5th day of March, 1947.

W. M. Davis

Assistant Secretary.

EXAMINED

ADD 5 MAR 47 ER

Le 16. Revised 10-39

In consideration of **THE ROYAL BANK OF CANADA** hereinafter referred to as the "Bank" negotiating for or taking on deposit or for discount or for collection or as collateral security or otherwise from the undersigned, bills of exchange, cheques, promissory notes, bank and express money orders or other orders for the payment of money, coupons, tickets pertaining to the purchase of grain, livestock and other produce or other instruments or securities whether or not the undersigned is a party thereto (the whole hereinafter referred to as "instruments", which shall be deemed to include instruments drawn on any branch of the Bank), the undersigned hereby agrees with the Bank as follows:

(1) **That** presentment, notice of dishonour, protest and notice of protest of all instruments is hereby waived unless the Bank receives at or prior to maturity special written instructions to the contrary from the undersigned in respect of any specified instrument or instruments and that, subject to any special written instructions, the undersigned shall be responsible and liable to the Bank on all instruments in the same manner and to the same extent as if the instruments had been duly presented and protested and notice of dishonour and notice of protest given as regards all parties thereto as required by any law applicable thereto, and that any person other than a member of the Bank's staff employed by the Bank to carry out any such special written instructions shall be deemed to be the agent of the undersigned.

2. **That** the Bank is authorized to present for payment or acceptance or collect the instruments through such banks or other agents as the Bank may deem best, at the sole risk and expense of the undersigned and save to the extent that definite instructions have been received by the Bank from the undersigned to give to or such banks or other agents such instructions as to collection as the Bank may deem best, and that the Bank may accept either cash or bank drafts, cheques, settlement vouchers, clearing house slips or any other evidence of payment on account of the instruments or in remittance therefor.

3. **That** the undersigned will indemnify the Bank against all claims made against the Bank and/or liability incurred by the Bank under any law having effect within the jurisdiction where any of the instruments are or may be payable including but without limiting the generality of the foregoing, any claim and/or liability which may arise by reason of the endorsement of the Bank or any branch or agency thereof and also against all claims and/or liability arising with respect to tickets pertaining to the purchase of grain, livestock and other produce whether by reason of forgery thereof or unauthorized signatures thereon or otherwise.

4. **That** the Bank is authorized to debit the account of the undersigned with any of the instruments or any of the evidence of payment referred to in section 2 hereof, which are not paid on presentation or which if paid the Bank may be called upon to refund or which may be dishonoured by non acceptance or non payment or any parts to which is bankrupt or insolvent, or which or the proceeds of which through no fault of the Bank have been lost, stolen or destroyed, or which, or the proceeds of which, for any reason the Bank is unable to collect or withdraw, together with all costs, charges and expenses incurred by the Bank in connection therewith and/or to debit the account of the undersigned with any cheques drawn on the branch of the Bank at which the account of the undersigned is being carried and which have been cashed, negotiated or credited to the account of the undersigned but which have not been found good.

5. **That** the Bank is authorized to pay as in the case of an ordinary cheque and debit the account of the undersigned in the customary manner with every promissory note or acceptance of the undersigned presented for payment at the branch of the Bank at which the account of the undersigned is being carried.

6. **That** the undersigned will repay to the Bank all amounts debited to the account of the undersigned in accordance with the provisions of this agreement.

7. **That** should the undersigned conduct an account or accounts at more than one branch of the Bank, the provisions of this agreement shall apply to each of such accounts unless the undersigned gives the Bank special written instructions to the contrary designating the particular account or accounts to which the provisions of this agreement shall not apply.

8. **That** this is to be a continuing consent and agreement and shall bind the undersigned and the heirs, executors, administrators, successors and assigns of the undersigned.

Dated at Toronto Canada this 5th day of May 1947

La Economie Agricole Ltd.

by Marie Delfino

Agent

EXHIBIT

APR 5 1948

Government Exhibit 334

128

Government Exhibit 334

GENERAL TRUSTS

C/O N.N. DAVIS, 619 Spadina Ave. ST., TORONTO.

RA 9533 1947

CHECKED	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD			
95,000.00	79,162.70	264,162.70	5 90,000.00
			INSPECTION 1948
90,000.00-		1949 FEB 10	.00

Government Exhibit 334

Government Exhibit 334

Government Exhibit 334

No 2 192

The Royal Bank of Canada

INCORPORATED

10 1949

TORONTO, ONT.

PAY TO THE ORDER OF

LA ECONOMICA AGENCY S.A.

$ 264,112.6

PAID ROYAL BANK OF CANADA $ 264112 AND 64 CTS

DOLL

FUNDS CURRENT AT THE NEW YORK CLEARING HOUSE

TO THE AGENCY

The Royal Bank of Canada

TORONTO STREET

NEW YORK

6 CENTS

PAY TO THE ORDER OF

ANY BANK, BANKER OR TRUST CO.

OR THROUGH THE

NEW YORK CLEARING HOUSE

MAR 7 53 2403 1 34

COMPANY

8)

Government Exhibit 336

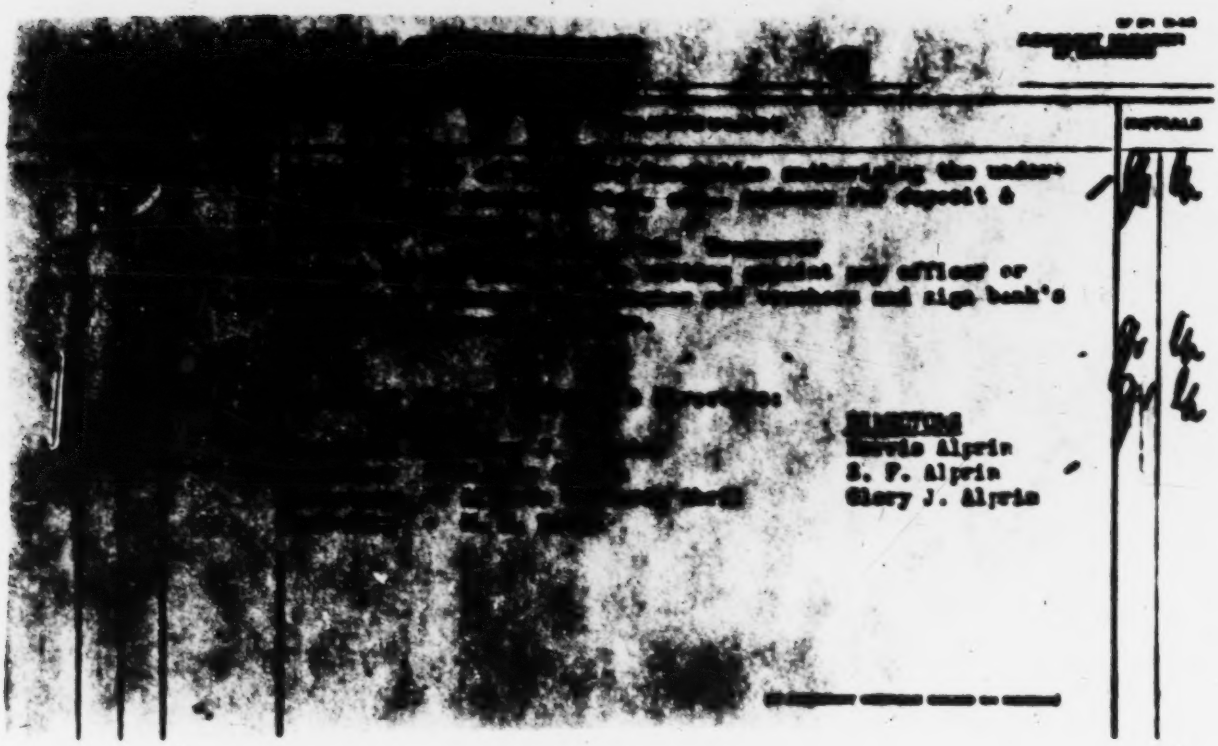
GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 31 1955

EL AGUILA EXPORTADORA, S.A.

THE ROYAL BANK OF CANADA

TORONTO, ONTARIO



[illegible] Gerald [illegible]

[illegible] Alprin [illegible]

[illegible] Alprin [illegible]

EXAMINED

MAY 10 1947

IF NECESSARY CONTINUE SIGNATURES ON REVERSE

[illegible]

[illegible] authorizing the under- [illegible] deposit &

[illegible] any officer or [illegible] and sign bank's

[illegible]

DIRECTORS
Harvis Alprin
S. F. Alprin
Glory J. Alprin

[illegible]

[illegible] EL [illegible] S.A.

OCCUPATION General Trading

ADDRESS c/o [illegible],
193 Robert St.,
Toronto, Ontario.

DATE OF FIRST INQUIRY AND BY WHOM ANSWERED

BY WHOM INTRODUCED AND OR REFERENCES

ACCOUNTS OPENED	DATE OPENED	AMOUNT	DATE CLOSED	Foreign [illegible]
Current Account	May 5/47	$79,162.70	Feb.10/47 Cheque to La Economica Agencies, S.A.	This account opened through the good offices of Mr. [illegible]. See card Parsons Incorporated.
Current A/C No.				
Foreign Cust. [illegible]				

TORONTO May 5, 1947

I, J. M. Davis Assistant Secretary of EL AGUILA EXPORTADORA, S. A., in English EAGLE EXPORTERS INC., a corporation duly organized and existing under the laws of the Republic of Cuba,

DO HEREBY CERTIFY: That the following is a true and correct copy of a Resolution duly adopted by the Board of Directors of said Corporation at a meeting duly called and held at Royal York Hotel Toronto, Canada, on the 5th day of May, 1947, at which a quorum was present and all legal requirements were strictly observed:

"RESOLVED That the Royal Bank of Canada Toronto, Canada (hereinafter called the Bank), be and hereby is designated depositary of the funds of EL AGUILA EXPORTADORA, S. A., in English EAGLE EXPORTERS INC., and that the President or Treasurer of said Corporation be and hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corporation with the Bank, and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders in favor of the above designated officers or any other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and the Bank is hereby further authorized to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation, any and all checks, drafts, notes or other instruments for the payment of money, whether or not endorsed by this Corporation, and that such items shall be deemed to have been all qualifiedly endorsed by this Corporation, and also to receive as the act of this Corporation, reconcilements of accounts when signed by the above designated officers or their appointee; and be it

"FURTHER RESOLVED that the President or Treasurer of this Corporation be and are hereby authorized for and on behalf of this Corporation to transact any and all such business with or through the Bank at any time as may be deemed necessary by said officers, and in reference to any of the businesses hereinbefore referred to, to make, enter into, execute and deliver to the Bank such documents as to such officers may seem to be necessary or desirable; any and all the withdrawals of money and/or transactions heretofore had in behalf of this corporation with the Bank, being hereby ratified, confirmed and approved.

"FURTHER RESOLVED that the President or Treasurer may, in writing, appoint from time to time such officer or employee of the Company as may be deemed advisable for the purpose of receiving all paid checks and vouchers and/or signing and delivering to the Bank the Bank's form of settlement of balances and reliance."

I FURTHER CERTIFY: That Harris Alprin, President, and Eddie Alprin, Treasurer, now occupy the offices designated in the above quoted resolution for which they were elected and that I, the undersigned, also occupy the office of Assistant Secretary, for which I was duly elected and that we are duly qualified as such officers.

I ALSO FURTHER CERTIFY: That EL AGUILA EXPORTADORA, S. A., in English EAGLE EXPORTERS INC., is duly organized under the laws of the Republic of Cuba, and has the power to take the action called for by the Resolution hereinbefore transcribed; as well as that no action has been taken to rescind or amend the foregoing, which is all in full force and effect at the present time.

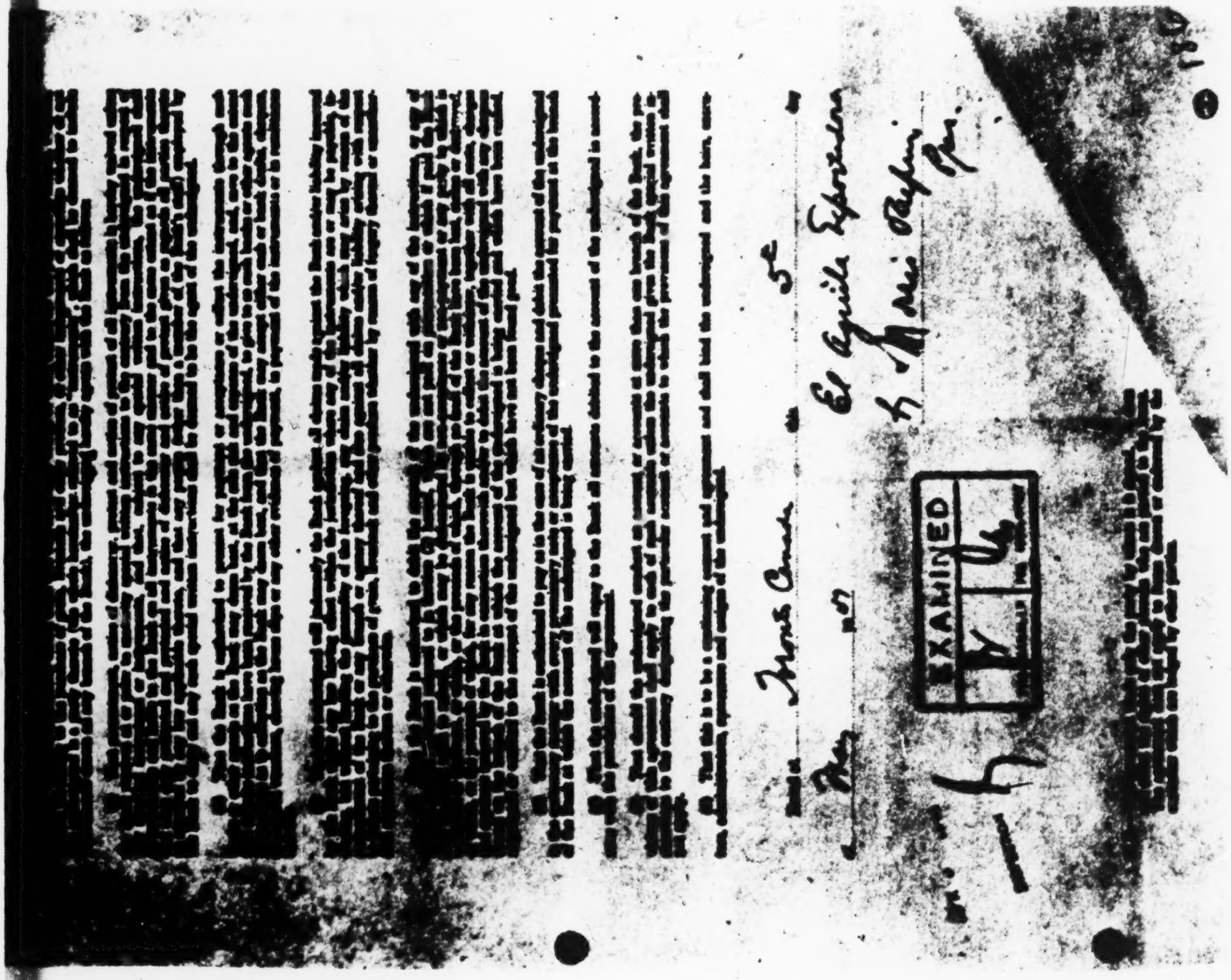
IN WITNESS WHEREOF, I have hereunto affixed my hand this 5th day of May, 1947.

Exhibit 1

136

Government Exhibit 336

Government Exhibit 336



Government Exhibit 336

BY DEMAND DRAFT ON NEW YORK

NAME A. S. A.

SHEET No.

ADDRESS

OCCUPATION

BY DEMAND DRAFT ON NEW YORK. PAYABLE

PHONE No. 619 Spadina Ave

FORMS HELD

RA 9533 1947

CHECKS	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD			
	79,162.70	MAY 5	79,162.70
50.06		MAY 13	79,112.64
79,112.64 -		1949	.00

Government Exhibit 336

The Manager,
The Royal Bank of Canada.
Toronto 1, Ont.

Dear Sir:

We certify that the officers of El Aguila Exportadora S.A. are as follows:

Morris O. Alpin. Pres.
S. F. Alpin Treas.
Alberto Valverde Abril Secy
M. M. Davis Asst Secy

EXAMINED

and that the following are the directors of the Company:

Morris O. Alpin
S. F. Alpin
Glory J. Alpin

We hereby undertake to notify you of any change in the directorate and/or officers of the Company, to furnish specimen Signatures, and until you receive written notification, you may assume for the purpose of conducting the bank account that the above named are the officers and directors of the Company and in charge of its affairs.

Yours truly,

Morris O. Alpin
President.

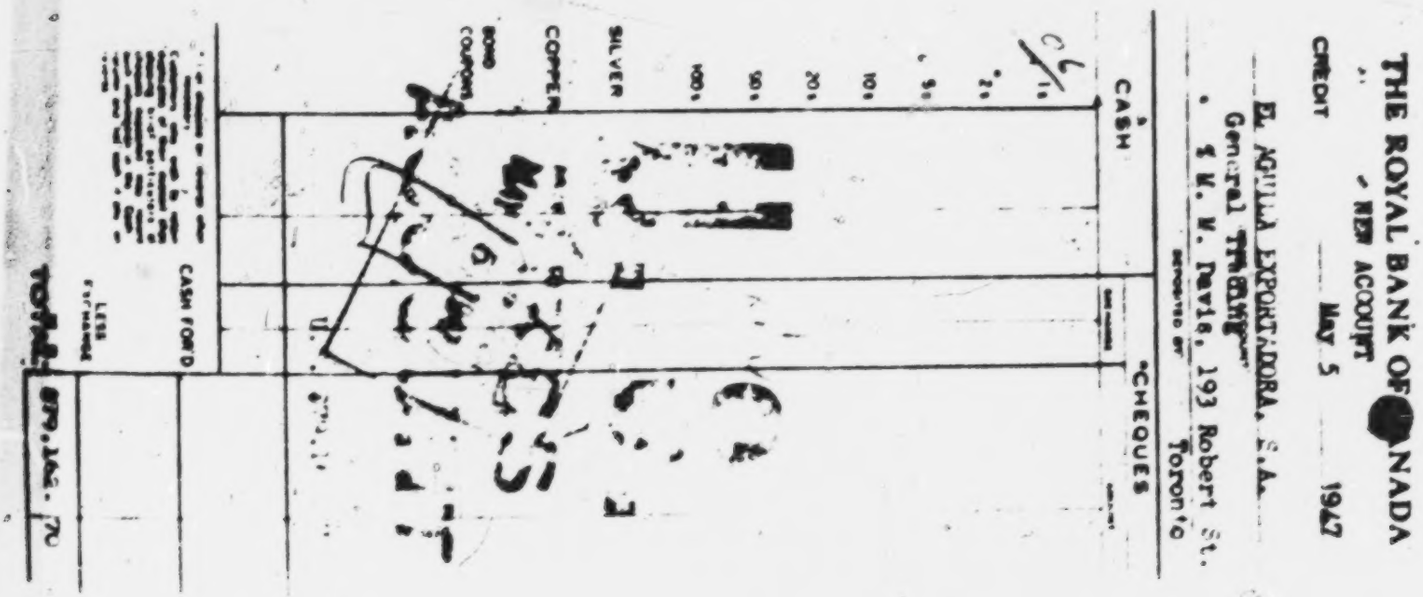
M. M. Davis
Asst. Secretary.

(SEAL)

Ara 1948
INSPECTION

Government Exhibit 336

There is no information regarding the debit of May 13/47 $50.00
It does not appear to have been Bank charges of any kind.
7 Feb 1952



Government Exhibit 337

GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 31 1955

COMPANIA COMERCIAL LA RIBERA, S.A.

THE ROYAL BANK OF CANADA

TORONTO, ONTARIO

28-4-

Compania Comercial La Ribera S.A., in English

La Ribera Trading Co., a Corporation duly organized and existing under the Laws of the Republic of Cuba.

_____ DO HEREBY CERTIFY: That the following is a true and correct copy of a Resolution duly adopted by the Board of Directors of said Corporation at a meeting duly called and held at Royal York Hotel, Toronto, Dominion of Canada, on March 19 1947, at which a quorum was present and all legal requirements were strictly observed:

_____ RESOLVED That the Royal Bank of Canada, Toronto, Canada, (hereinafter called the Bank), be and hereby are designated depositories of the funds of Compania Comercial La Ribera S.A., in English La Ribera Trading Co., and that the President or Treasurer of said Corporation be and hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corporation with the Bank, and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders in favor of the above designated officer or any other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation that maintained with it; and the Bank is hereby further authorized to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation any and all checks, drafts, notes or other instruments for the payment of money, whether or not endorsed by this Corporation, and that at such item shall be deemed to have all qualifiedly endorsed by this Corporation, and also to receive as the act of this Corporation, reconcilements of accounts when signed by the above designated officers or their appointee; and be it,

[illegible] RESOLVED That the President or Treasurer of this Corporation be and is hereby authorized for and on behalf of this Corporation to transact any and all such business with or through the Bank at any time as may be deemed by said officers and in reference to any of the businesses hereinbefore referred to, to make, enter into, execute and deliver to the Bank such documents as to such officers, may seem to be necessary or desirable; any and all the withdrawals of money and/or transactions heretofore had in behalf of this Corporation with the Bank being hereby ratified, confirmed and approved.

[illegible] RESOLVED That the President, or Treasurer may, in writing, appoint from time to time such officer or employee of this Company as may be deemed advisable for the purpose of receiving all paid checks and vouchers and/or signing and delivering to the Bank the Bank's form of settlement of balances and [illegible]

[illegible] That Maurice E. Haas

[illegible] the officers designated in the above

quoted resolution for which ~~they were~~ he was elected and that I, the undersigned, also occupy the office of Assistant Secretary, for which I was duly elected and that we are duly qualified as such officers.

_____ I ALSO FURTHER CERTIFY: That Compania Comercial La Ribera SA, in English La Ribera Trading Co, is duly organized under the laws of the Republic of Cuba, and has the power to take the action called for by the Resolution hereinbefore transcribed; as well as that no action has been taken to rescind or amend the foregoing, which is all in full force and effect at the present time.

_____ IN WITNESS WHEREOF, I have hereunto affixed my hand this 19th day of March 1947.

M. M. Davis
Assistant Secretary

Government Exhibit 337

TORONTO March 19. 1947

The Manager,
The Royal Bank of Canada,
Toronto 1, Ont.

Dear Sir:

We certify that the officers of Compania Comercial La Ribera S.A

are as follows:

MAURICE A. HAAS	PRESIDENT
ESTELLE HAAS	TREASURER
ADRIAN L. HAAS	SECRETARY
MEYER M. DAVIS	ASST. SECRETARY

and that the following are the directors of the Company:

MAURICE A. HAAS
ESTELLE HAAS
ADRIAN L. HAAS

EXAMINED
PRO MANAGER | PRO ACCOUNTANT

We hereby undertake to notify you of any change in the directorate and/or officers of the Company, to furnish specimen Signatures, and until you receive written notification, you may assume for the purpose of conducting the bank account that the above named are the officers and directors of the Company and in charge of its affairs.

Yours truly,

(SEAL)

Maurice Haas
President.

M. M. Davis
ASST. Secretary.

APR 5 1948 INSPECTION

NAME COMPANIA COMERCIAL LA RIBERA S.A.

ACCOUNT NUMBER IF SAVINGS

SHEET NO 1

DATE	FORM No	PARTICULARS	INITIALS
Mar. 19 47	\	Certified copy of Directors' Resolution authorizing the undernoted to sign cheques, notes, drafts, etc., endorse for deposit and verify the account. The President The President or the Treasurer may appoint officers or employees to receipt for paid cheques and vouchers and to verify:	
Mar. 19 47	\	Certified list of Officers & Directors:	

OFFICERS		DIRECTORS
President	Maurice A. Haas	Maurice A. Haas
Treasurer	Estelle Haas	Estelle Haas
Secretary	Adrian L. Haas	Adrian L. Haas
Asst. Secretary	Meyer M. Davis	

T.3.
28-4-51.

(IF NECESSARY CONTINUE RECORD ON REVERSE)

COMPANIA COMERCIAL LA RIBERA S.A.

NAME (AS SIGNED IF AN INDIVIDUAL) COMPANIA COMERCIAL LA RIBERA S.A.

ADDRESS C/O MAURICE A. HAAS 122 E 42ND ST. NEW YORK CITY

OCCUPATION

PHONE No

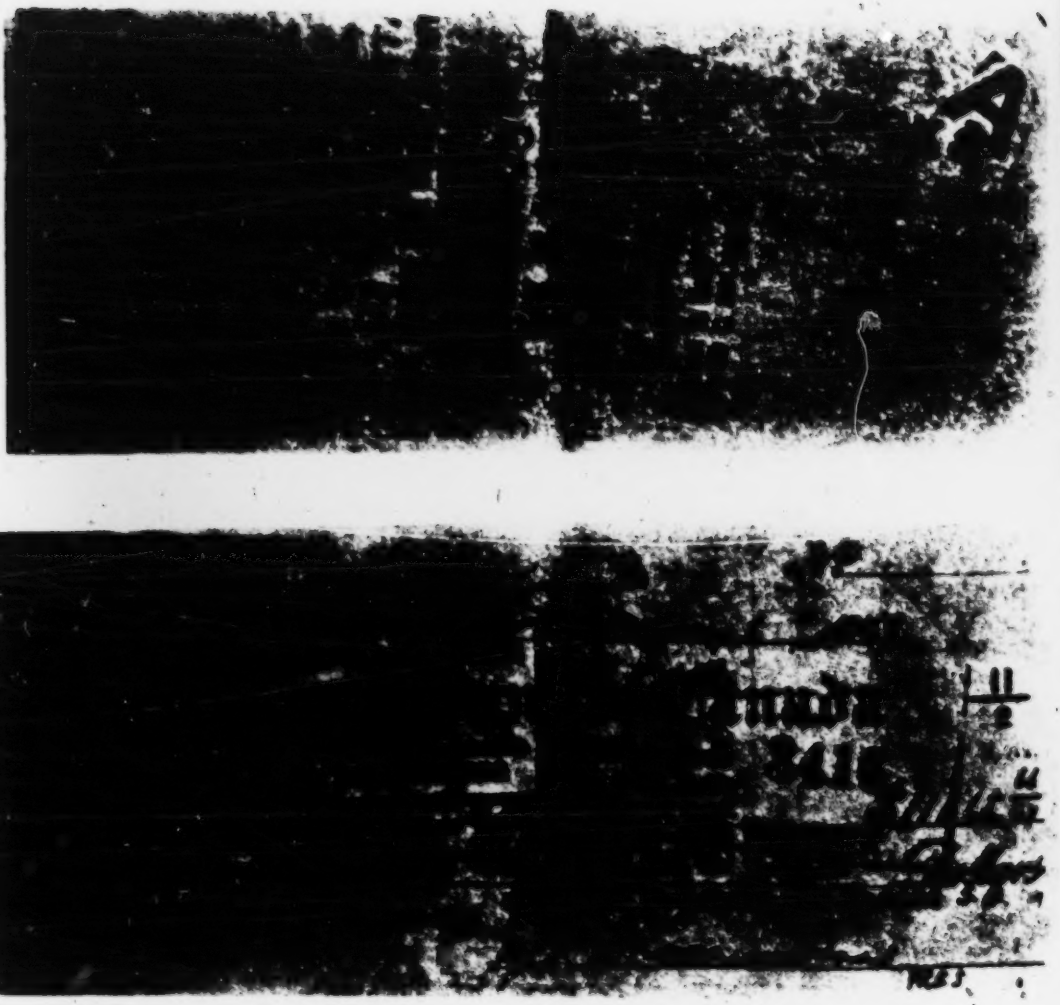
FORMS HELD (SEE SEC 18 CIRC 40 II)

c/o M. M. Davis
619 Spadina Ave. (Apt 6) - RA 9533

CHECKING OFFICER'S INITIALS

CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD			
	350000.00	JAN 19	350000.00
		1949	
116666.66		FEB 7	233333.34
116666.67		FEB 8	116666.67
116666.67		FEB 9	.00

Government Exhibit 337



Government Exhibit 357

Government Exhibit 339

GOVERNMENT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
MAY 31 1955

TIVOLI TRADING CO S.A.

ROYAL BANK of CANADA NEW YORK

Government Exhibit 339

Form SF 3rd Rev. 12-48

NAME OF COMPANY TIVOLI TRADING CO. S.A. ACCOUNT NUMBER

AUTHORIZED SIGNATURES

H. H. Klein, Agent

Individually, or

Ellis Rosenberg, Pres. & Treas. Ellis Rosenberg

jointly with

H. H. Klein, Agent

IF NECESSARY CONTIN
SIGNATURES ON REVE

DATE

ABOGADOS
AGUIAR 411
HABANA

---I, ELLIS ROSENBERG, President and Treasurer of "TIVOLI TRADING COMPANY, S.A.", a corporation duly organized and existing under - the laws of the Republic of Panama.----------

---DO HEREBY CERTIFY: That the following is a true and correct -- transcription of a resolution duly adopted by the Board of Directors of said Corporation at a meeting duly called and held at No. four hundred and eleven Aguiar Street, Havana, Republic of Cuba,- Friday, thirteenth of April of one thousand nine hundred and forty five at welve thirty o'clock p. m., at which a quorum was present, and all legal requirements were strictly observed:----------

---RESOLVED, that Mr. HYMAN HARVEY KLEIN be and he is hereby - appointed as AGENT of this corporation with sufficient authority to act either individually or jointly with Mr. ELLIS - ROSENBERG as President and Treasurer of the Corporation, in connection with the opening of any banking accounts in any- bank or branch or agency of any bank whether in Panama or in any other place in the world and to sign in said bank accounts any and all checks, drafts and any other orders withrespect to any funds at any time, inclusive of any such checks, drafts or other orders in favor of said HYMAN HARVEY KLEIN or any other person.----------

---FURTHER RESOLVED that the Royal Bank of Canada, Head-Office, Montreal, Canada or any of its branches and/or agencies --- throughout the world (hereinafter called the Bank), be and- hereby are designated depositories of the funds of "TIVOLI- TRADING COMPANY, S.A." and that the Agent, individually or jointly with Mr. Ellis Rosenberg, President and Treasurer, of said corporation be and hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts, or other orders with respect to any funds at any time to the credit of this Corporation with the Bank and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders in favor of the above designated officer or other person, and- that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and the Bank is hereby further authorized to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation any and all checks, drafts, notes or other instruments for the payment of money, whether or not endorsed by this Corporation, and that at such item shall be deemed to have all qualifiedly endorsed by this Corporation, and also to receive as the act of this Corporation, reconcilments of accounts when signed by the above designated officer or his appointee; and be it,----------

---FURTHER RESOLVED THAT the AGENT of said corporation individually or jointly with Mr. Ellis Rosenberg, President and Treasu-

rer, of this Corporation be and is hereby authorised for and on behalf of this Corporation to transact any and all such businesses with or through the Bank at any time as may be deemed by said officer and/or AGENT and in reference to any of the businesses hereinbefore referred to, to make, enter into, execute and deliver to the Bank such documents as to such officer and/or AGENT may seem to be necessary or desirable; any and all the withdrawals of money and/or transactions heretofore had in behalf of - this Corporation with the Bank being hereby ratified, - confirmed and approved.----------

---FURTHER RESOLVED THAT: The President, Vice-President, - Secretary or Secretary-Treasurer may in writing appoint from time to time such officer or employee of the Company as may be deemed advisable for the purpose of receiving all paid cheques and vouchers and of signing and delivering to the Bank the Bank's form of settlement of balances and release.----------

---I FURTHER CERTIFY THAT: HYMAN HARVEY KLEIN now occupies the office designated in the above quoted resolution for which he was appointed and that I, the undersigned, also occupy the offices of President and Treasurer for which I was appointed at the time of the incorporation and that we are duly qualified as such officers.----------

---I ALSO FURTHER CERTIFY THAT: "TIVOLI TRADING COMPANY, S.A.", is duly organised under the laws of the Republic of Panama and has the power to take the action called for by the resolution hereinbefore transcribed; as well as that no action has been taken to rescind or amend the foregoing, which is all in full force and effect at the present time.----------

---IN WITNESS WHEREOF, I have hereunto affixed my hand this sixteenth day of April, one thousand nine hundred and forty five.-

Ellis Rosenberg
President and Treasurer.-

---On this sixteenth day of April of one thousand nine hundred and forty five, before me personally appeared ELLIS ROSENBERG, to me known to be to be the President and Treasurer of "TIVOLI TRADING COMPANY, S.A.", and the individual described in and who executed the foregoing instrument, and he duly executed the same.----------

Notary.-

CITY AND PROVINCE OF PANAMA

ss.

REPUBLIC OF CUBA
CITY AND PROVINCE OF HABANA
EMBASSY OF THE UNITED STATES OF AMERICA } ss:

I, the undersigned, Vice Consul of the United States of America at Habana, Cuba, duly commissioned and qualified, do hereby certify that [redacted]

before whom the within instrument has been acknowledged, was at the time of signing it, a duly authorized registered notary public of Habana, Republic of Cuba.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of this Embassy at Habana, Cuba this [redacted] day of [redacted] 19[redacted]

[redacted]

R. F. WASHINGTON
VICE CONSUL OF THE UNITED STATES OF AMERICA

November 1945 19

The Agents,
The Royal Bank of Canada,
68 William St.,
New York, N. Y.

Dear Sirs:

We certify that the officers of TIVOLI TRADING COMPANY, S.A.

a Corporation of the Republic of Panama, are as follows:

President	Ellis Rosenberg
1st Vice President	Enrique de Cubas
2nd Vice President	William Rokoff
Treasurer	Ellis Rosenberg
Secretary	Julio Forcade
1st Asst. Secretary	Albert Roer
2nd Asst. Secretary	William Rokoff

and that the following are the directors of the Company:

H. H. Klein
Ellis Rosenberg
Albert Roer

We hereby undertake to notify you of any change in the directorate and/or officers of the Company, to furnish specimen signatures, and until you receive written notification, you may assume for the purpose of conducting the bank account that the above named are the officers and directors of the Compar and in charge of its affairs.

Yours truly,

Ellis Rosenberg
President

William Rokoff

Government Exhibit 339

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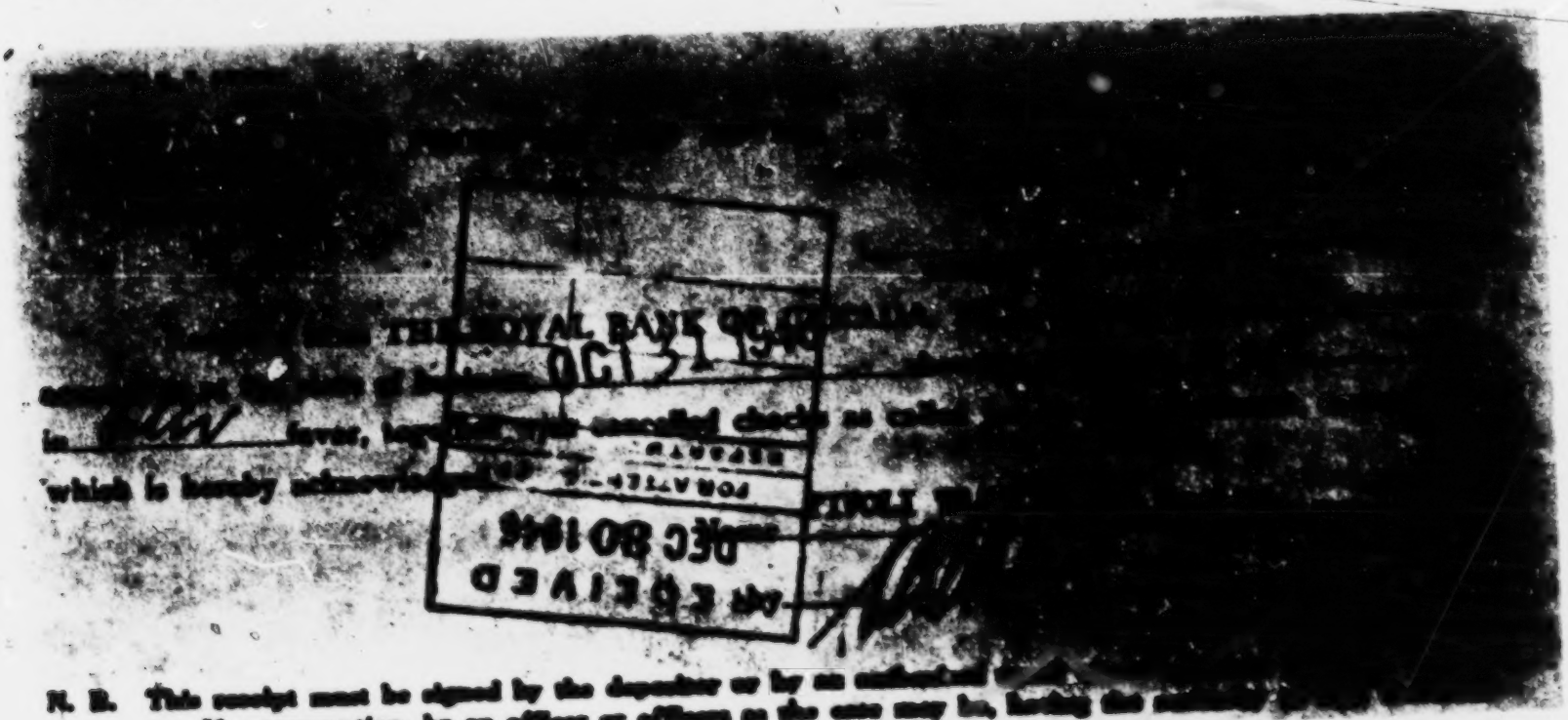
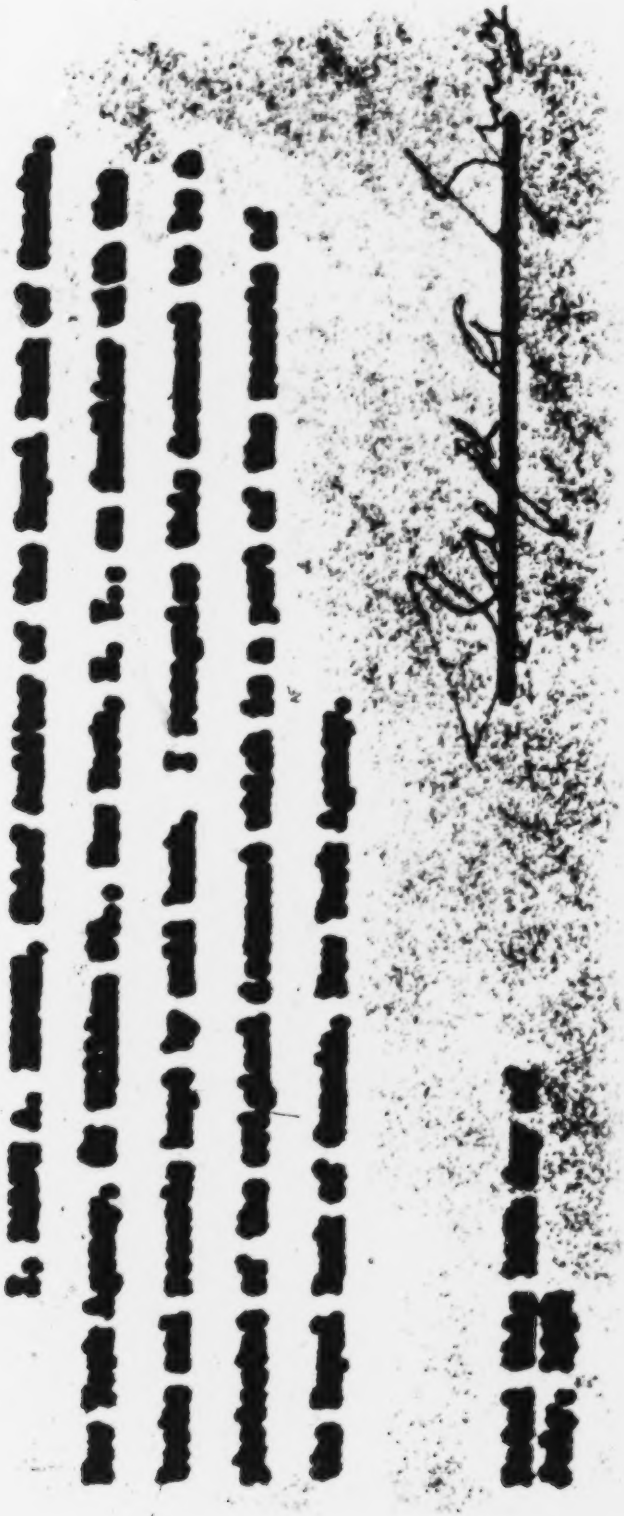


N. B. This receipt must be signed by the depositor or by an authorized
on. If a corporation, by an officer or officers as the case may be, having the

Government Exhibit 339



TIVOLI TRADING COMPANY, S. A.
8 CALLE SEGUNDA
PANAMA, R. P.

April 20, 1946

Government Exhibit 339
157

The Royal Bank of Canada,
68 William Street,
New York City, N. Y.

Dear Sirs:

Will you kindly arrange for the opening of a U. S. Dollar Account at your Head Office, Montreal, Quebec, Canada, and transfer to the credit of same, $500,000.00 U. S. Dollars, for which purpose we are enclosing herewith our check dated April 20, 1946 in the amount of $500,000.00 U. S. Dollars, made payable to The Royal Bank of Canada.

Yours very truly,

TIVOLI TRADING COMPANY, S. A.

Agent

The Manager,
The Royal Bank of Canada,
Montreal, Canada.

Dear Sir:

We have credited you on Buff Slip today with $500,000 (Five Hundred Thousand Dollars) for the purpose of opening a U. S. Dollar Account on your books in the name of Tivoli Trading Company, S. A. We enclose copy of resolution passed by the company's directors authorising the opening of an account with your branch, and you will observe that the copy has been certified to by us as being a true copy of the original. We also enclose copy of list of officers and directors together with card bearing signature of M. M. Klein, Agent.

In due course instructions will be sent to you in regard the address to which statements, advices, mail, etc., are to be forwarded. In the meantime, please note that under no circumstances are statements, correspondence, etc., to be forwarded to the company's address in Panama. Merely for the completion of your records, we might mention that that address is Calle Segunda No. 8.

Yours truly,

[illegible]

Agent

Countersigned:

pro Accountant

159

Government Exhibit 339

No. 387705

AGENCY OF

The Royal Bank of Canada.

NEW YORK SEP 3 - 1946

PAY TO THE ORDER OF Fenolio Trading Co. S.A.

EXACTLY [illegible] STS

To The Chase National Bank,
New York.

1-74

AT TO THE ORDER OF AN

THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK

1-74

SEP 30 1946

THE ROYAL BANK OF CANADA

FENOLIO TRADING CORPORATION, S.A.
[illegible] STREET
[illegible]

TIVOLI TRADING COMPANY, S. A.
8 CALLE SEGUNDA
PANAMA, R. P.

August 26, 1946

The Royal Bank of Canada,
68 William Street,
New York City, N.Y.

Dear Sirs:

We are attaching herewith our check drawn on our account, in the amount of $581,000.00 U. S. Dollars, made payable to yourselves, for which we will thank you to issue to us a New York Draft drawn on your institution for the same amount.

Yours very truly,

TIVOLI TRADING COMPANY, S. A.

Agent

Government Exhibit 339

I, [illegible], Chief Auditor of the Royal Bank of Canada, New York Agency, 68 William St., New York, N. Y., am familiar with the books and records kept by said bank. I recognize this document to be a photostat of the original document which is a part of the records of the Royal Bank of Canada, New York Agency.

[illegible]

Dated this 12th day of
July, 19[illegible]

COPY

TIVOLI TRADING COMPANY, S.A.

April 29, 1946

Tivoli Trading Company,
8 Calle Segunda,
Panama, R. P.

Dear Sirs:

We have your letter of April 20th enclosing cheque for $500,000 (Five Hundred Thousand Dollars) drawn against your account with this Agency. We have been pleased to request our Montreal Branch to open a U. S. Dollar Account in your name for the same amount. We have forwarded to them copies of the resolution of your Board of Directors authorizing the opening of the account, also list of your officers and directors, together with card bearing signature of Mr. H. H. Klein, Agent.

We understand that you intend to furnish us with instructions regarding the mailing of statements, correspondence, etc., by our Montreal Branch.

Yours truly,

ORIGINAL SIGNED BY
E. C. HOLAHAN

Government Exhibit 339

158

April 29, 1946

The Manager,
The Royal Bank of Canada,

P
Y

TIVOLI TRADING COMPANY, S.A.
Panama, P.P.

February 1, 1947

The Royal Bank of Canada,
Royal Bank Building,
360 St. James Street, West,
Montreal, Quebec, Canada.

Dear Sirs:

Will you please instruct your New York Agency to purchase for our account, $1,500,000 United States of America 7/8% Certificates of Indebtedness, Series B-1948, dated February 1, 1947, due February 1, 1948, in $50,000 denominations, at market, debiting our U. S. Dollar Account with your institution for the cost of such purchase.

Also, please instruct your New York Agency to hold same in safekeeping for our account, and to deliver same only to Mr. Ellis Rosenberg, Treasurer and Secretary or H. H. Klein, President of this Company.

Your prompt attention to the above will be appreciated.

Yours very truly,

TIVOLI TRADING COMPANY, S.A.

H.H.KLEIN
President

Receive t/o .84% basis

1047 AM
Feb. 7th

6864

The Royal Bank of Canada

Please address all communications to the Manager

Refer to file

WEM/MK

Montreal 1, P.Q.

February 6, 1947

The Agency,
The Royal Bank of Canada,
68 William Street,
New York, N.Y.,
U.S.A.

Dear Sirs: Attention: Mr. Holahan
Re: Tivoli Trading Company, S.A.

We enclose copy of a letter from the above company handed to us today by Mr. Ellis Rosenberg. Will you please purchase the securities mentioned therein, debiting the cost to the company's U.S. Funds Account with us. You will note that the company's letter also contains safekeeping instructions. While it is not mentioned in the attached letter Mr. Rosenberg asked us to advise you that the company wishes the securities to be in bearer form.

We confirm that Mr. H. H. Klein has full signing authority on behalf of the company and new authorizations lodged with us today, and to be furnished to you in due course, indicate him now to be President rather than Agent as formerly.

Yours truly,

W. E. McLaughlin

W.E.McLaughlin
Assistant Manager

164
Government Exhibit 339

February 7, 1947

February 7, 1947

The Manager,
The Royal Bank of Canada,
Montreal, Que., Canada.

Dear Sir: Attention: Mr. W. E. McLaughlin
Assistant Manager

Re: Tivoli Trading Company, S. A.

We telegraphed you today as follows:

"U. S. securities referred to your letter February 6th purchased on a .84% basis. Delivery Monday."

The securities will be delivered in $100,000 pieces as this type of security is not issued in denominations of $50,000. The cost will be debited to the U. S. Dollar Account of the company conducted at your branch.

We have noted the company's instructions in regard to safekeeping and we also observe that new authorisations will be furnished to us in due course.

We shall advise you particulars of the securities when the actual delivery has been made.

Yours truly,

[illegible] SIGNED BY
[illegible] HOLAHAN

Agent

February 10, 1947

The Manager,
The Royal Bank of Canada,
Montreal, Que., Canada.

Dear Sir: Attention: Mr. W. E. McLoughlin
Assistant Manager

Re: Vivali Trading Company, S. A.

With further reference to your letter of February 6th, we enclose dealer's confirmation covering the purchase of $1,900,000 U.S. Certificates of Indebtedness 7/8% due February 1, 1948. We also enclose copy of our debit slip covering the purchase.

The certificates are numbered as follows:

8983/9, 8992/7, 10429/30 for $100,000 each

Interest is payable with the principal, viz., $875 per $100,000 certificate.

For our records we should appreciate your advising us the address of the company. If the certificates are held by us up to the time interest is collected, it will be necessary for us to withhold U. S. Income Tax to the extent of 30% as we understand the corporation is of Panamanian origin.

Yours truly,

ORIGINAL SIGNED BY
[illegible] DOLAHAN

6864

The Royal Bank of Canada

Please address all communications to the Manager

Refer to file

EA/AT

Montreal P.Q.

February 12, 1947

E. C. Holahan, Esq.,
Agent,
The Royal Bank of Canada,
68 William Street,
New York, 5, N.Y.

Dear Mr. Holahan:

RE: TIVOLI TRADING COMPANY, S.A.

We acknowledge receipt of your letter of February 10th giving us particulars of the securities recently purchased by you on the instructions of the above company. Unfortunately we are unable to comply with your request to give you the address of the company as quite frankly we do not know what it is. The authorizations show that the company is a Panamanian corporation but the resolutions were passed at a meeting held in Havana, Cuba, a situation which we understand is permitted under Panamanian law. As you are probably aware with this and other associated companies we mail whatsoever is passed, but all advices, etc., are collected by the writer and turned over personally to either Mr. Klein or Mr. Rosenberg on one of their frequent visits to Montreal. Our ledger heading for this account shows the address as The Royal Bank of Canada, New York, which again is not of much help to you.

Yours truly,

W. E. McLaughlin

W.E. McLaughlin

Government Exhibit 339

THE ROYAL BANK OF CANADA

FORM R-20 AGENCY

THE ROYAL BANK OF CANADA

68 WILLIAM STREET

NEW YORK 5, N. Y. Nov 20 1945

CREDIT [illegible] Company SA

[illegible]	145	058	59

PAID
TELLER
NOV 20 1945
[illegible] ROYAL BANK OF CANADA
NEW YORK [illegible]

In receiving items for credit or collection, The Royal Bank of Canada obligates itself only as the customer's collecting agent, assuming no responsibility beyond the exercise of due care, [illegible] all items subject to final payment in cash or current credits. At any time before [illegible] Royal Bank of Canada reserves the right to charge back to the customer's account [illegible] item previously credited, whether returned or not, and even though [illegible]

February 13, 1947

W. E. McLaughlin, Esq., Assistant Manager,
The Royal Bank of Canada,
M o n t r e a l.

Dear Mr. McLaughlin:

LIVOLI TRADING COMPANY, S.A.

Please accept our thanks for your letter of February 12th. The matter of the address is now of no importance as the securities were delivered today to Mr. Rosenberg, Secretary-Treasurer of the above company.

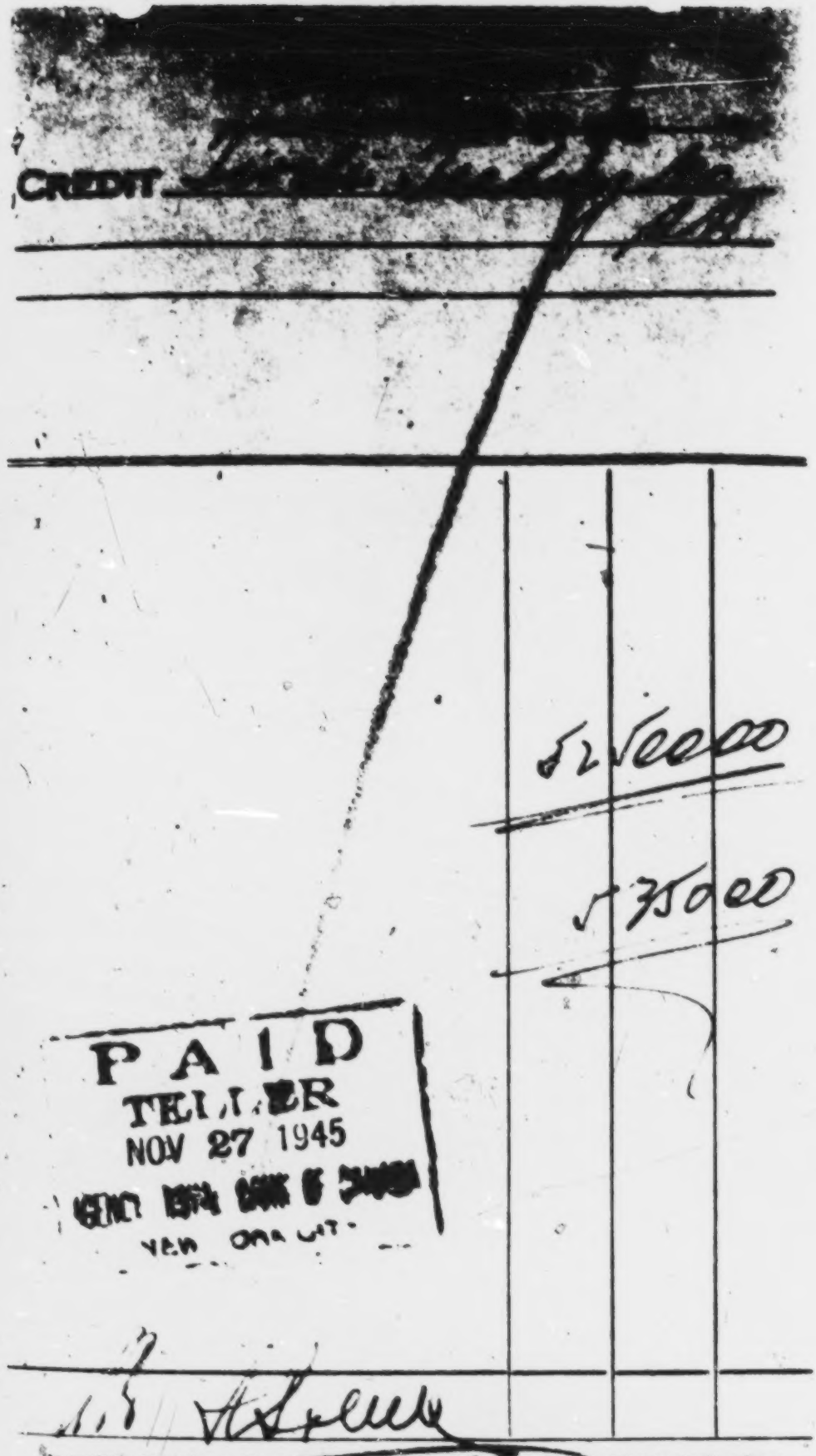
Yours truly,

ORIGINAL SIGNED BY
E. C. HOLAHAN
AGENT

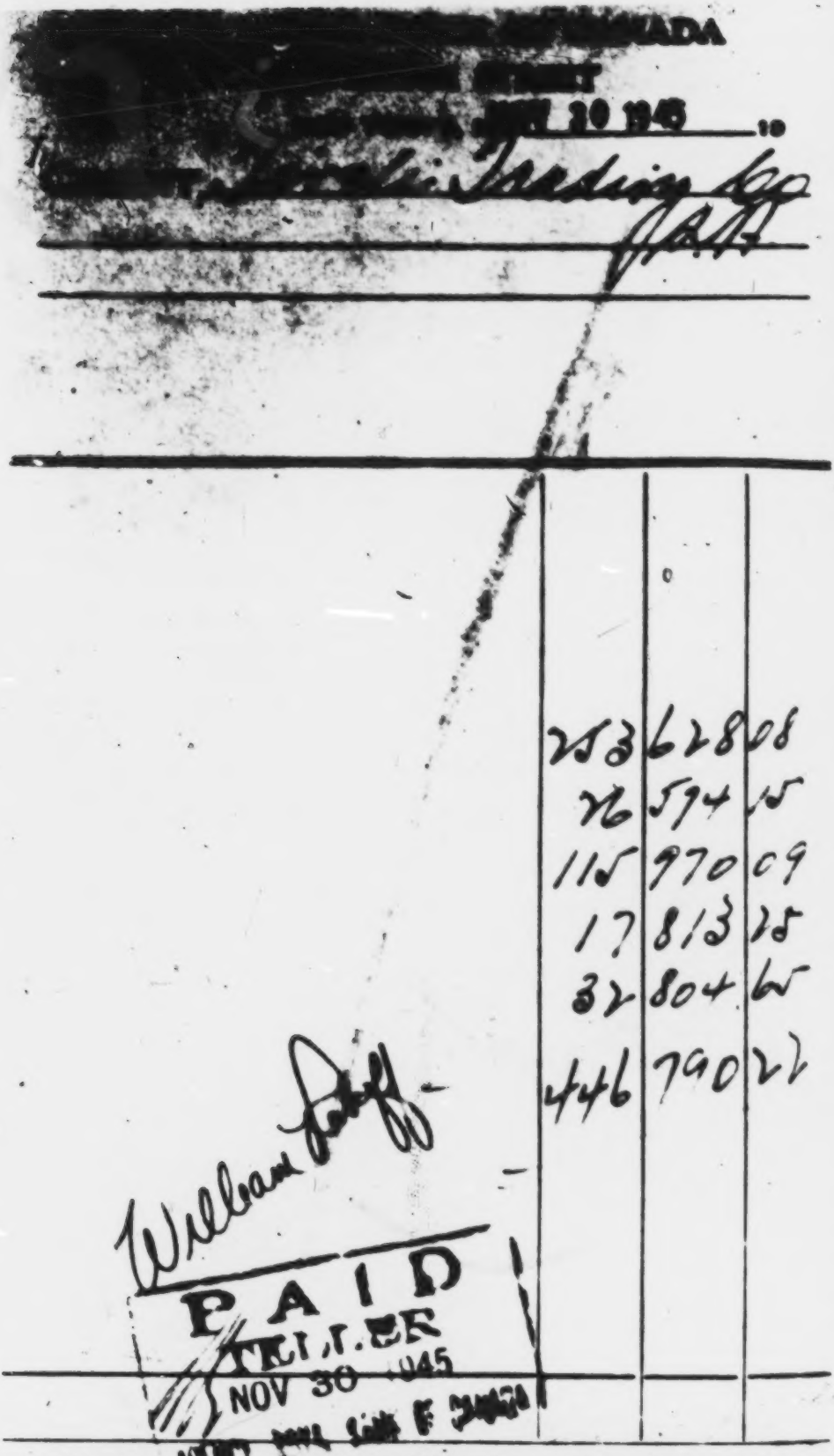
ROYAL BANK OF CANADA, NEW YORK AGENCY

68 bbc

Government Exhibit 339



Government Exhibit 339



[redacted] ADA

[redacted]

[redacted] NOV 30 1945 19

[redacted] Trading Co

J.A.H.

253	628	08
26	594	15
115	970	09
17	813	25
32	804	65
446	790	22

William Lahoff

PAID
TELLER
NOV 30 1945
[illegible] BANK OF CANADA

In receiving [illegible] credit or collection, The Royal Bank of Canada obligates itself only as the customer's collecting agent, accepting no responsibility beyond the exercise of due care, crediting all items subject to final payment in cash or solvent credits. At any time before final payment, The Royal Bank of Canada reserves the right to charge back to the customer's account the amount of any item previously credited, whether returned or not, and even though drawn on itself. It is understood that The Royal Bank of Canada, or any of its correspondents, may send items, directly or indirectly, to any other bank including the payer, for collection subject to all conditions from time to time imposed by such banks, and may accept the drafts or credits of any such banks including the payer, as conditional payment in lieu of cash, and shall not be responsible for the default or negligence of such banks or their sub-agents, or for losses in transit, or otherwise in the course of collection, but only for its [illegible]

Government Exhibit 339

THE ROYAL BANK OF CANADA
68 WILLIAM STREET
NEW YORK 5, N. Y. JAN 7 1946 19

CREDIT Tivoli Trading Co
L.A.

47	990	60
41	803	00
70	075	00
159	868	60

PAID
TELLER
JAN 7 1946
[illegible]
NEW YORK [illegible]

[illegible]

Government Exhibit 339

THE ROYAL BANK OF CANADA
68 WILLIAM STREET
NEW YORK 5, N. Y. 12 Mar 1946

CREDIT Tivoli Trading Co SA

Wallace & Co.	85	450	
Cameron Thiard Co	35	335	50
	120	785	50

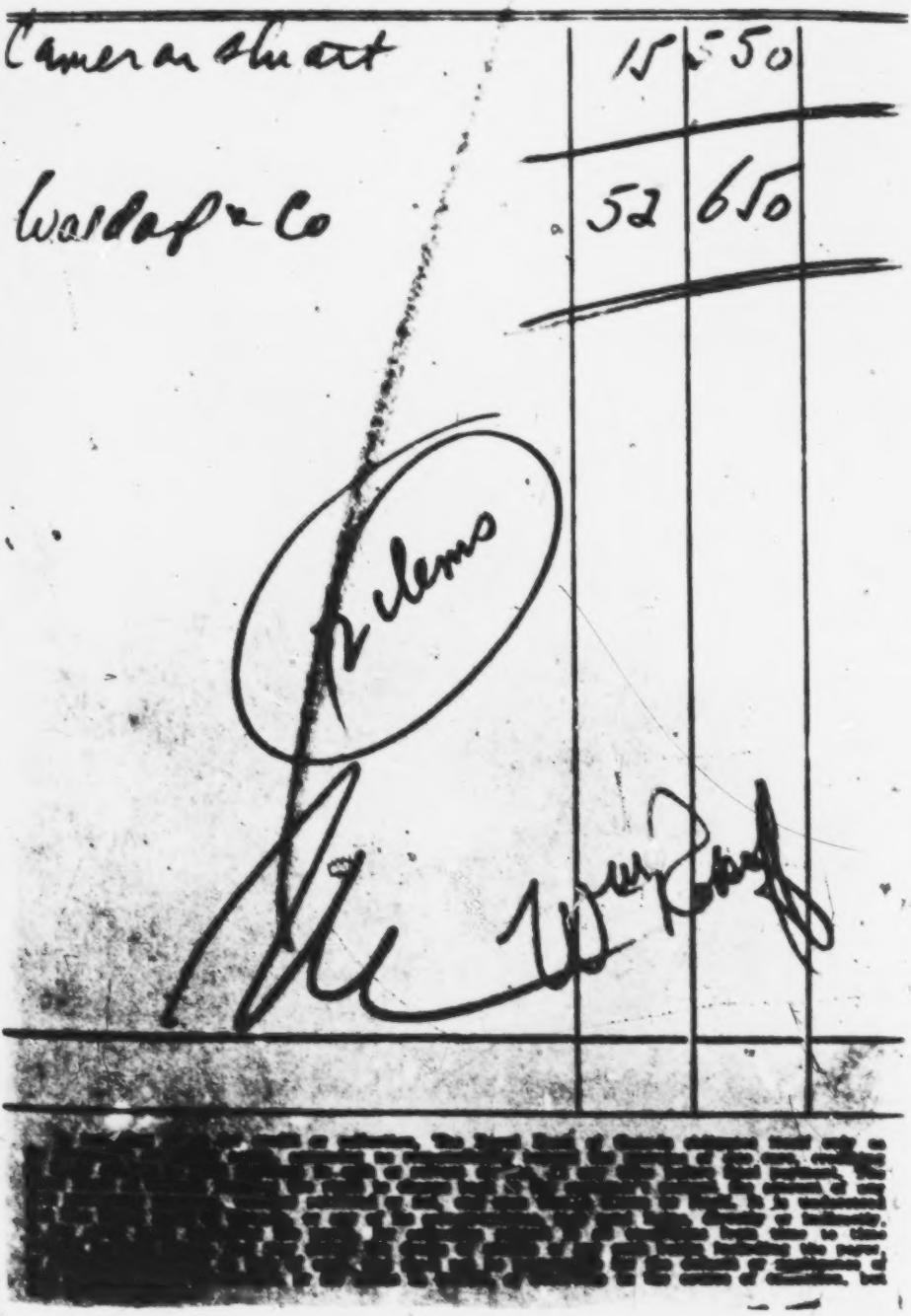
PAID
MAR 13 1946

Government Exhibit 339

THE ROYAL BANK OF CANADA
68 WILLIAM STREET
NEW YORK 5, N. Y. April 2 19 61

CREDIT Tivoli Trading Co S A

Camera sheet	15	50
Waldorf & Co	52	65



Government Exhibit 339

THE ROYAL BANK OF CANADA
68 WILLIAM STREET
NEW YORK 5, N. Y. APR 29 1946 19

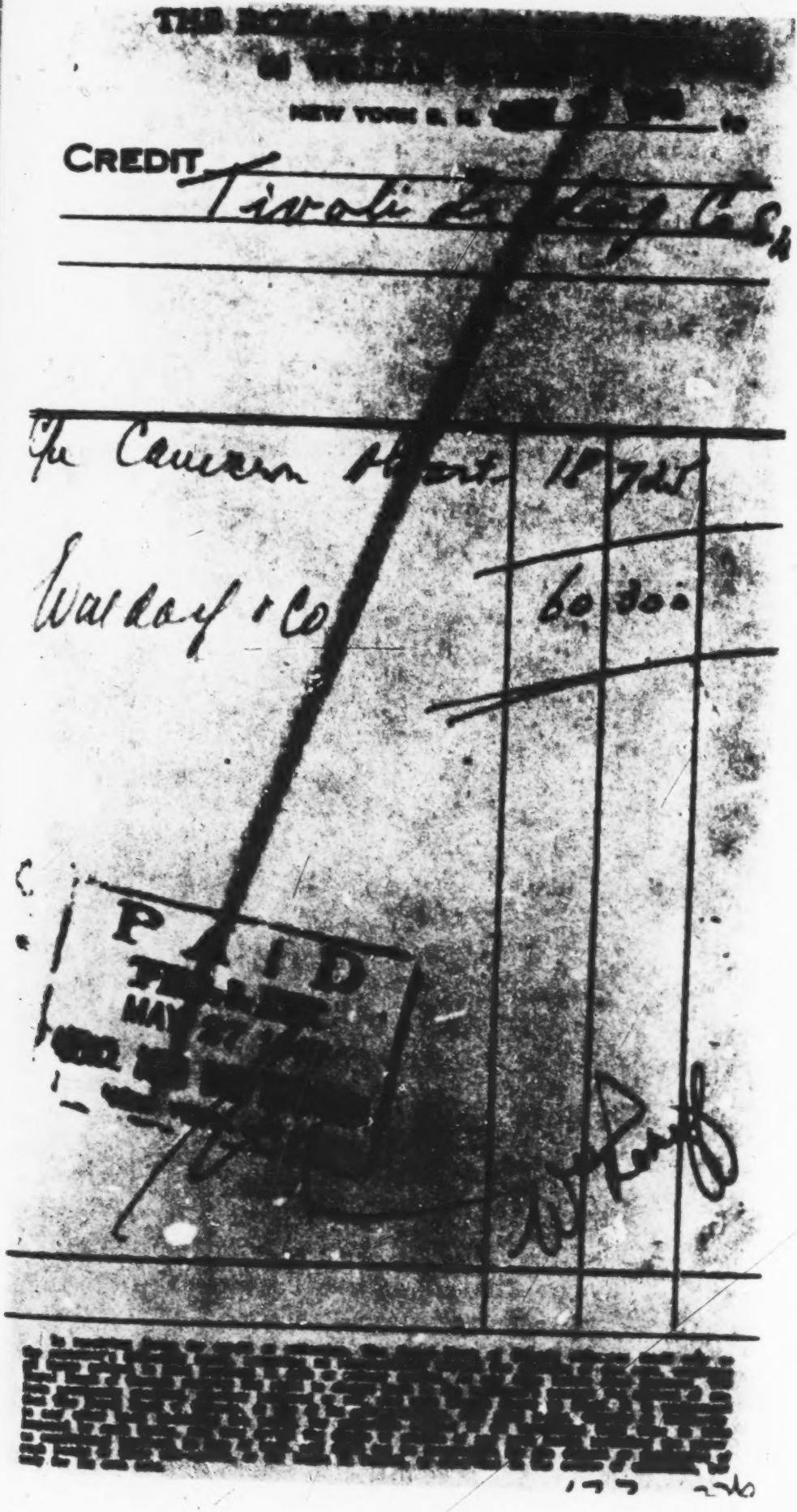
CREDIT Tivoli Trading Co Sh

Waldorf & Co	47	131
[illegible] Stuart	18	000
	65	131

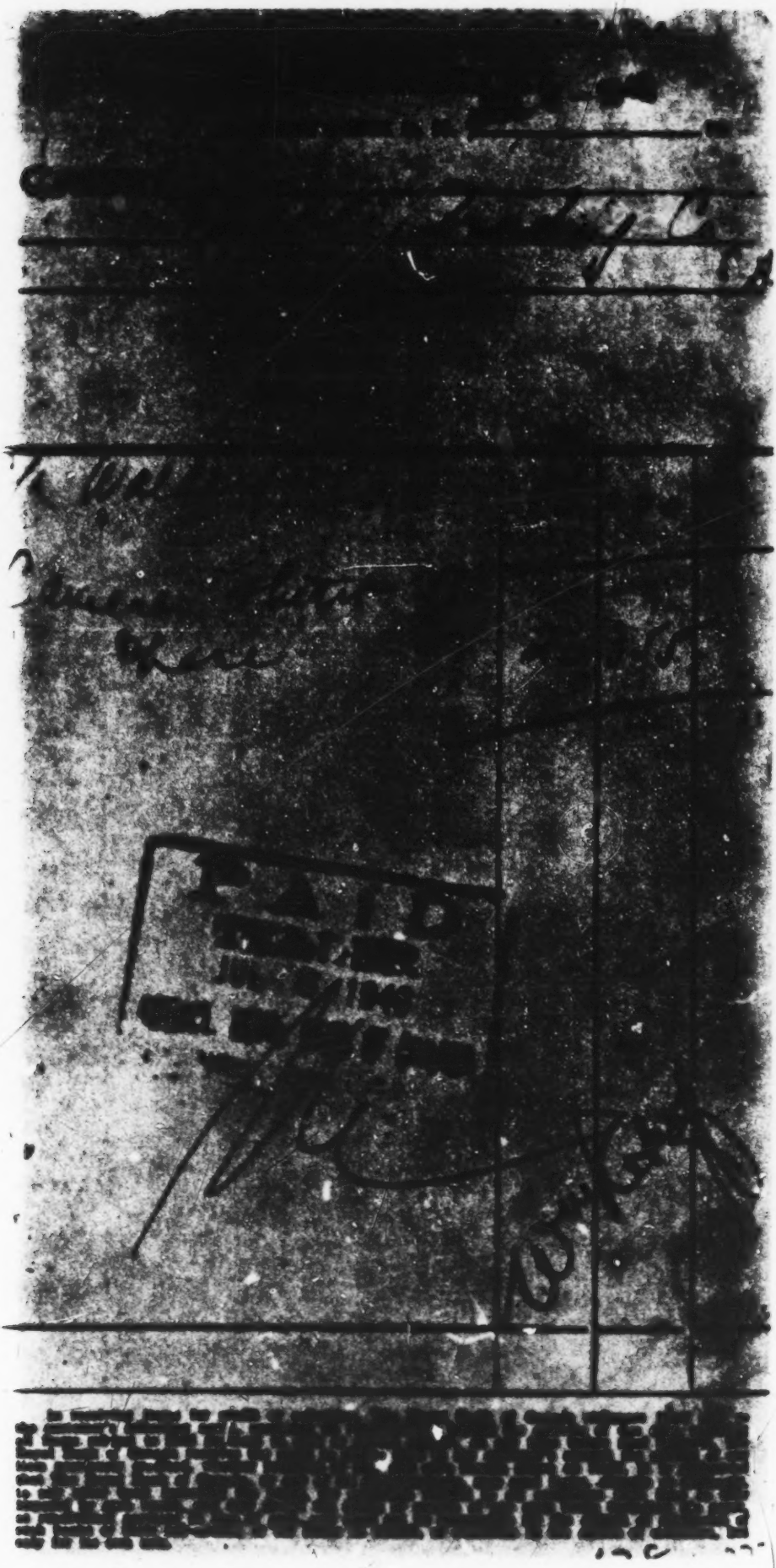
PAID
TELLER
APR 29 1946
[illegible] ROYAL BANK OF CANADA
[illegible] NEW YORK CITY

In receiving items for credit or collection, The Royal Bank of Canada obligates itself only to the customer's collecting agent, assuming no responsibility beyond the exercise of due care, crediting all items subject to final payment in cash or subject credits. At any time before final payment, The Royal Bank of Canada reserves the right to charge back to the customer's account the amount of any item previously credited, whether returned or not, and even though drawn on itself. It is understood that The Royal Bank of Canada, or any of its correspondents, may send items, directly or indirectly, to any other bank including the payer, for collection subject to all conditions from time to time imposed by such banks, and may accept the drafts or credits of any such banks including the payer, as conditional payment in lieu of cash, and shall not be responsible for the default or negligence of such banks or their sub-agents, or for losses in transit, or otherwise in the course of collection, but only for its own acts.

Government Exhibit 339



Government Exhibit 339



Government Exhibit 339

THE ROYAL BANK OF CANADA
68 WILLIAM STREET
NEW YORK 5, N. Y. AUG 6 - 1946 19

CREDIT Tivoli Trading Co S-a.

Cameron Stuart Co Ltd	12	580	00.
Waldorf & Co Ltd	26	327	50

PAID
TELLER
AUG 6 1946
AGENCY ROYAL BANK OF CANADA
NEW YORK CITY

[illegible]

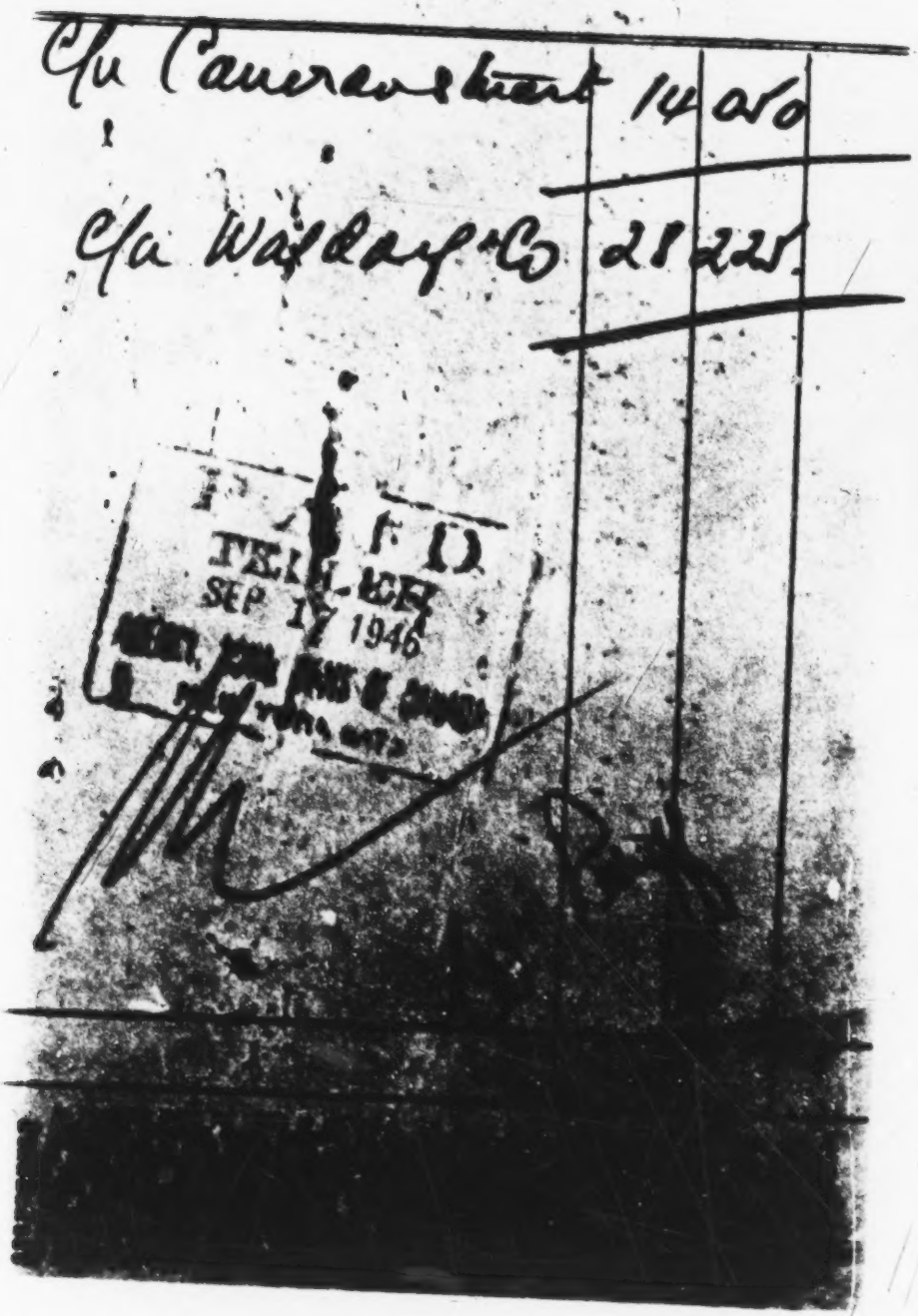
Government Exhibit 339

THE ROYAL BANK OF CANADA

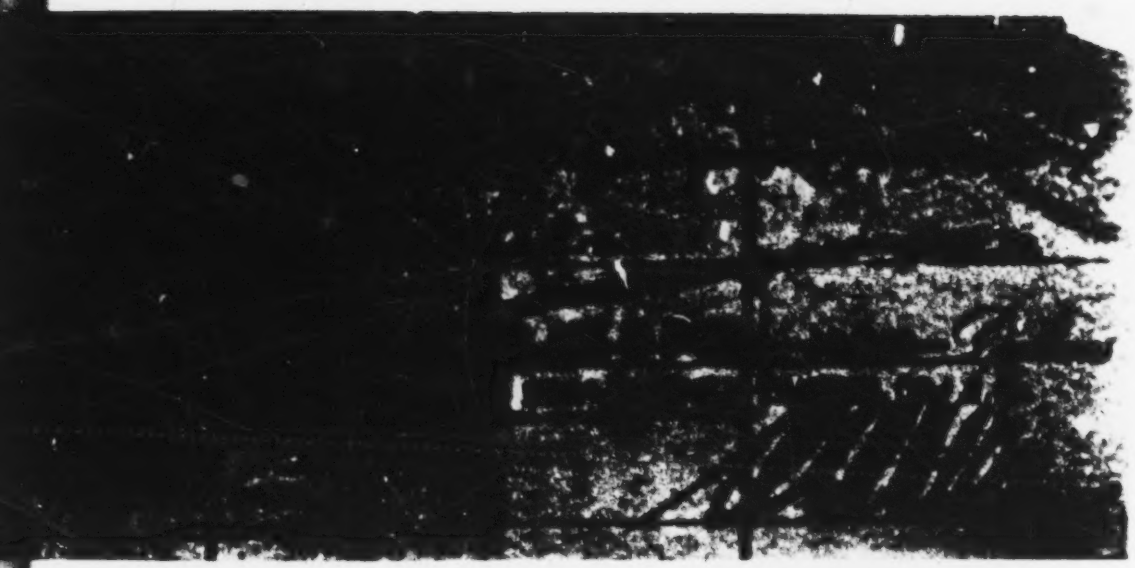
68 WILLIAM STREET SEP 17 1946

NEW YORK 8, N. Y. 19

CREDIT Tivoli Trading Co S.A.



Government Exhibit 339



NEW YORK

DELIVERED TO; February 13th 19 47

Mr. Ellis Rosenberg, Secretary-Treasurer — By order of Tivoli Trading Co., S. A.

over-counter — For account of

Quantity	Description	Amount
$1,500,000.00	U. S. OF AMERICA 7/8% Certificates of Indebtedness	
	Series "B" dated Feb. 1, 1947 Due: February 1st, 1948	
	numbers 8983/9 - 8992/7 - 10429/30 for $100,000. each	

Received the above described securities for purpose of inspection prior to payment, it being understood that the title thereto shall not pass until payment of the above amount is made in cash or its equivalent to THE ROYAL BANK OF CANADA, 68 William Street, New York

Tivoli Trading Co., S. A.

Government Exhibit 280

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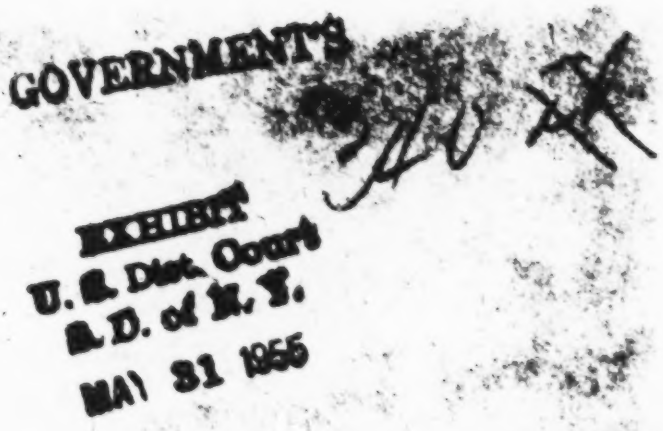
Government Exhibit 340



Ind. Trading Co.

Royal Bank of Canada Mont Que.

US Dollars Account

TIVOLI TRADING COMPANY, S. A.
[illegible]
PANAMA, R. P.

February 1, 1947

The Royal Bank of Canada,
Royal Bank Building,
360 St. James Street, West,
Montreal, Quebec, Canada.

Dear Sirs:

Will you please instruct your New York Agency to purchase for our account, $1,500,000.00 United States of America 7/8% Certificates of Indebtedness, Series B-1948, dated February 1, 1947, due February 1, 1948, in $50,000.00 denominations, at market, debiting our U. S. Dollar Account with your institution for the cost of such purchase.

Also, please instruct your New York Agency to hold same in safekeeping for our account, and to deliver same only to Mr. Ellis Rosenberg, Treasurer and Secretary, or H. H. Klein, President of this Company.

Your prompt attention to the above will be appreciated.

Yours very truly,

TIVOLI TRADING COMPANY, S. A.

[signature]

Government Exhibit 340

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Government Exhibit 340

NAME TIVOLI TRADING COMPANY, S.A.

DATE	FORM No.	PARTICULARS
Dec. 30 46		Certified copy of Directors Resolution. Cheques to be signed by Hyman Harvey Klein, Presi
Feb. 24 47		Certified list of Officers and Directors: OFFICERS — DIRECT President — Hyman Harvey Klein — Hyman Vice-Pres. — Raul Perez Vitier — Ellis Treasurer — Ellis Rosenberg — Jaime Asst.Secty. — Jaime Cabarracos Secretary — Ellis Rosenberg

[illegible] Act

Payable [illegible] New York

PHONE NO

NAME

OCCUPATION

ADDRESS

Under not circumstances is any mail to be sent to this company, advices etc. are to be handed to Mr. McLaughlin.

FORMS HELD See Sec 18 Circ (40-1)		RULE 248 (A10)
NUMBER	INITIALS	INITIALS

CHEQUES	DEPOSITS	DATE	BALANCE
		1945	
BALANCE BROUGHT FORWARD			
	CM 500,000.00	APR 30	500,000.00*
	581,000.00		1,081,000.00*
.06			1,080,999.94*
	143,067.07		1,224,067.01*
	48,650.00	OCT 18	1,272,717.01*
	2,164,096.62	DEC 18 1947	3,436,813.63*
00,828.9[illegible]		FEB 11	1,935,984.68*
55,000.00		MAR 3	1,880,984.68 —
35,000.00		MAR 20	1,845,984.68 —
[illegible]		MAR 27	00 —

hibit 340

Governme

October 15, 46.

A R.P.

of

33,200.00
15,450.00

[illegible]

Government Exhibit 540

U S. Dollars Acct.

Payable by [illegible] New York

October 15, 46.

TIVOLI TRADING CO. S.A.

8 CALLE [illegible]

PANAMA R.P.

CREDITED

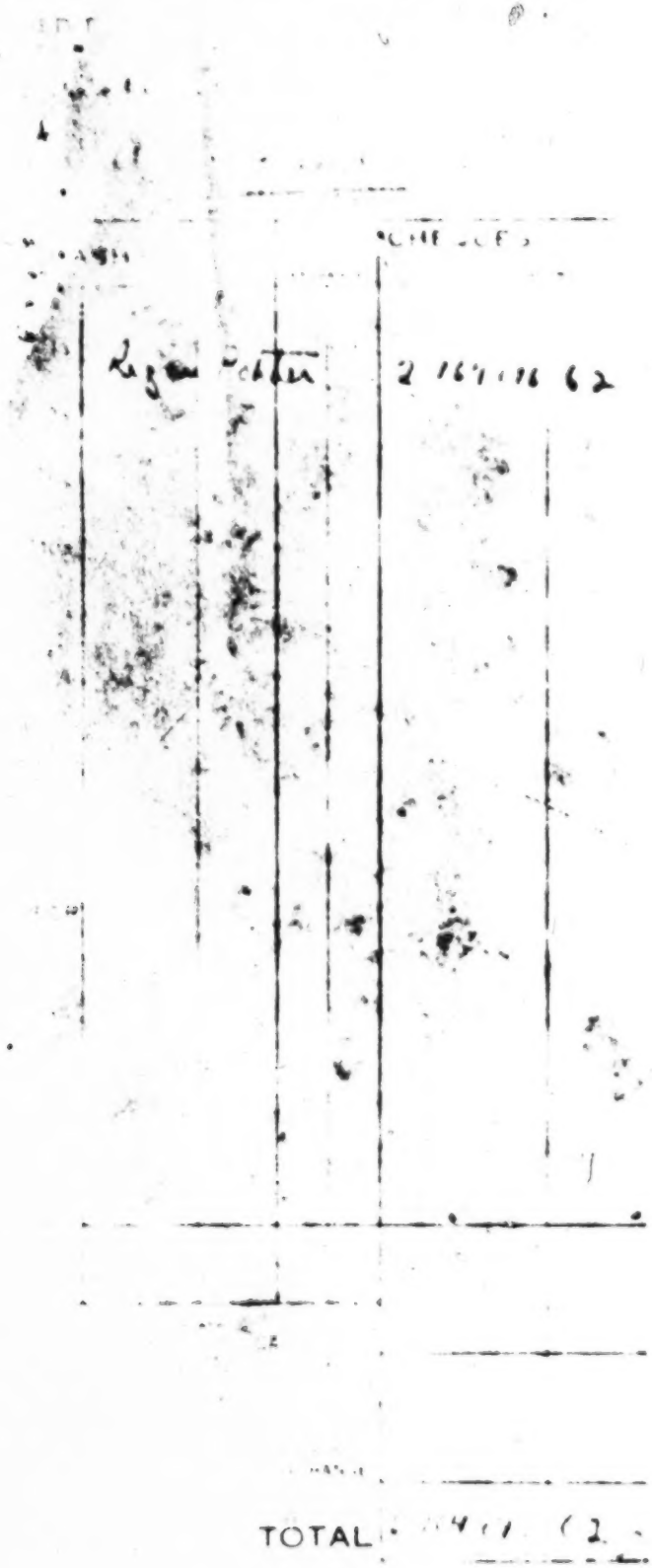
Cheques enclosed in your letter of Sept. 6/46.

	$3,200.00
	15,450.52
Total	$18,650.52

CREDIT BOOK

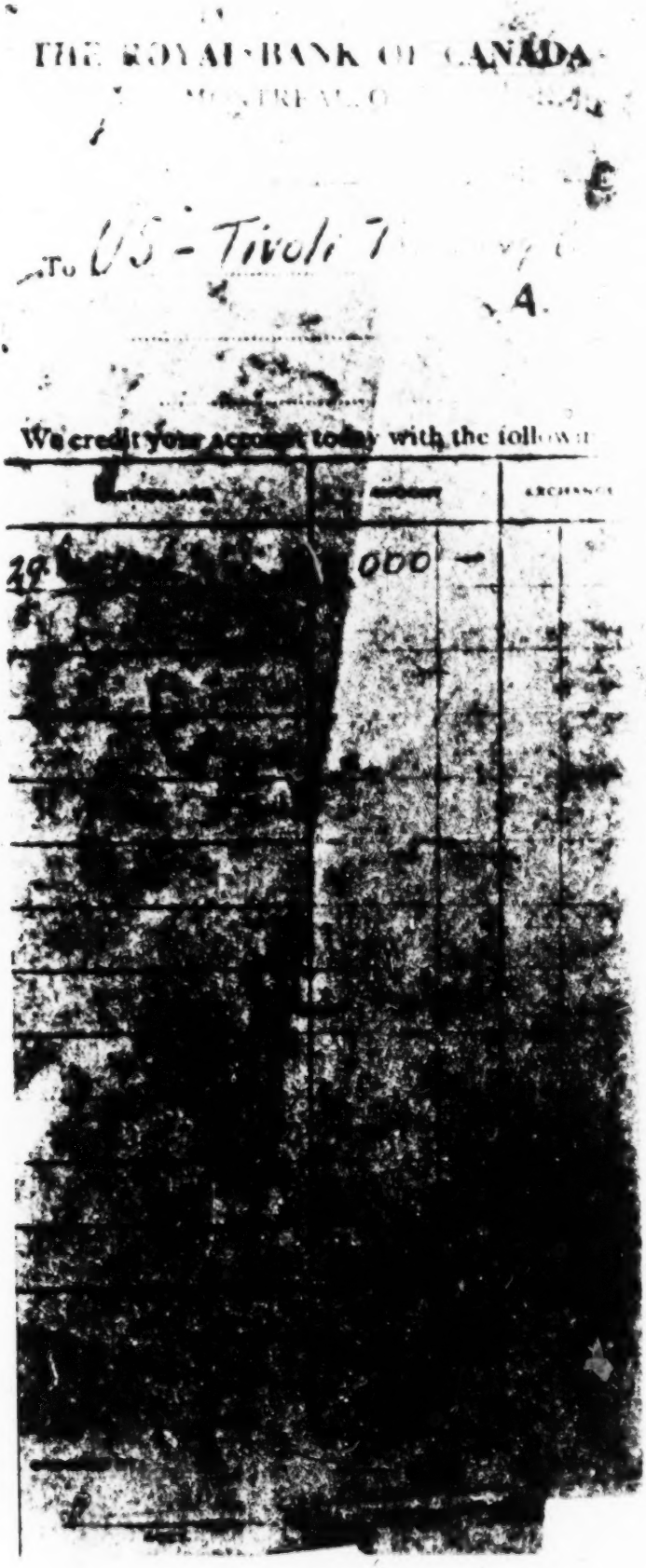
Government Exhibit 340

THE ROYAL BANK OF CANADA



TOTAL

Government Exhibit 540


THE ROYAL BANK OF CANADA

To US - Tivoli 7

A.

We credit your account today with the follow

29 000 —

Government Exhibit 340

Government Exhibit 340

THE ROYAL BANK OF CANADA

Sept 17 1946

CREDIT

Arvali Trading Co SA

NAME OF ACCOUNT

DEPOSITED BY

CASH

*CHEQUES

1s
2s
5s
10s
20s
50s
100s

581000

CREDIT BOOK

SILVER

COPPER

AND COUPONS

CASH FORWD

LESS EXCHANGE

TOTAL 581000

Government Exhibit 340

Montreal, Que. February 24, 1947 No

The Royal Bank of Canada

MONTREAL BRANCH

Pay COMPANIA COMERCIAL LA RIBERA, S. A. or Order $35,000.00

THIRTY FIVE THOUSAND AND 00/100 Dollars

TIVOLI TRADING CO. S. A.

President

U. S. Dollars Acct.

Payable by demand draft on New York

CANADA EXCISE 6 CENTS

THE ROYAL BANK OF CANADA MAR 20

FOR DEPOSIT

Payee

Brown

THE ROYAL BANK OF CANADA MAR 19 1947 16 TORONTO, ONT.

CLEARED NO PROTEST TELLER FOURTEEN MAR 20 1947 THE ROYAL BANK OF CANADA TORONTO, ONT.

Government Exhibit 340

No 2 186200

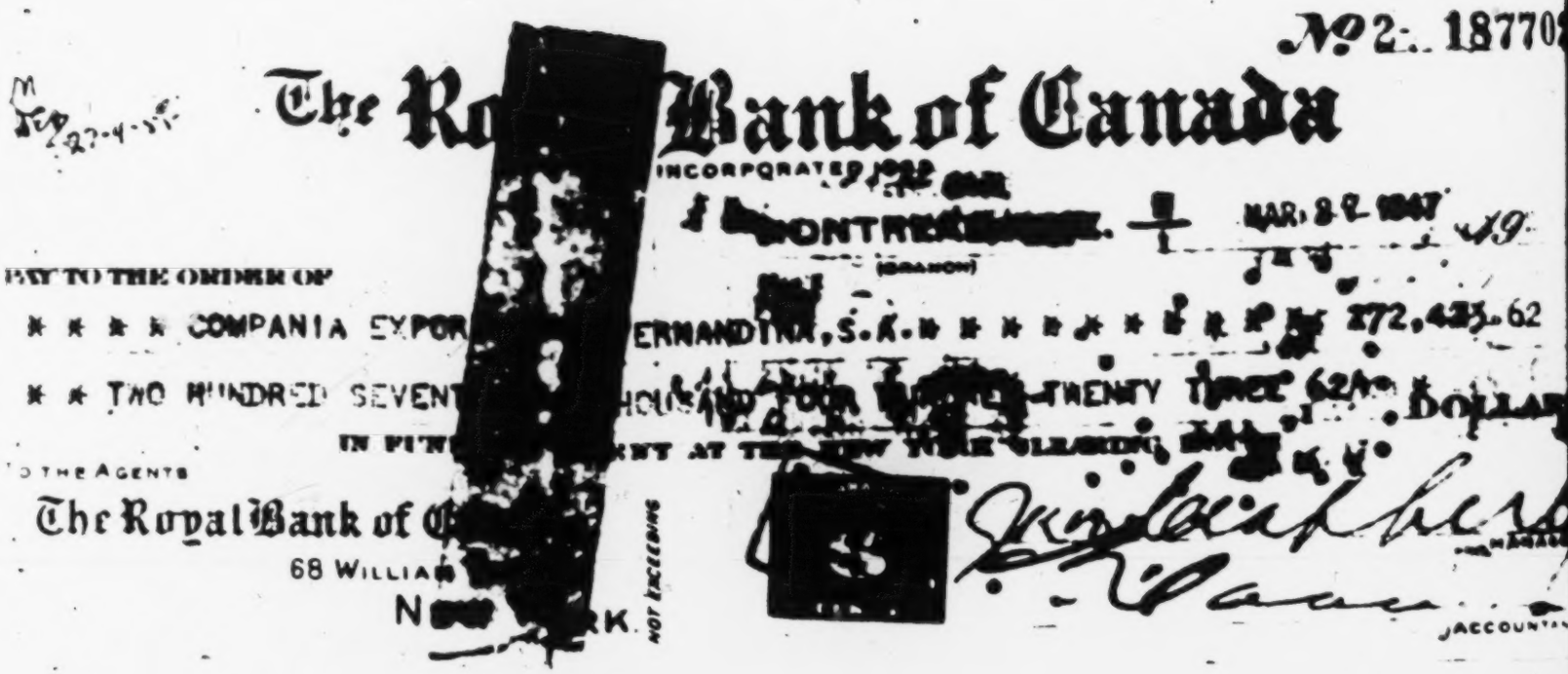
The Royal Bank of Canada

MAR 27 1947 19

PAY TO THE ORDER OF

* * * LA ECONOMICA AGENCIAS * * *

Government Exhibit 340



№ 2 18770

The Ro[redacted] Bank of Canada

INCORPORATED 1922

MONTREAL, [redacted] MAR 2[redacted] 1947

PAY TO THE ORDER OF

* * * * COMPANIA EXPOR[redacted]ERNANDINA, S.A. * * * * * * * * * * 272,4[redacted].62

* * TWO HUNDRED SEVENT[redacted]HOUSAND FOUR [redacted] TWENTY THREE 62/[redacted] DOLLA[redacted]

IN FUN[redacted]NT AT THE NEW YORK CLEARING [redacted]

TO THE AGENTS

The Royal Bank of C[redacted]

68 WILLIA[redacted]

N[redacted]RK

NOT EXCEEDING

[redacted]

[redacted]

ACCOUNTA[redacted]

[redacted] to the order of The Bank of Nova Scotia, 49 Wall St., New York for deposit to the credit of our account.

[redacted]ia.Exportadora Fernandina,S.A.

President

[redacted]

[redacted]

PAY TO THE ORDER OF

[redacted]NY BANK DE BANKE[redacted]

MAR 2[redacted] 1950

AGENCY

THE BANK OF NOVA SCOTIA, NEW YORK

[redacted]

Government Exhibit 340

No. 187701

The Royal Bank of Canada

MONTREAL, QUE. 9 MAR 27 1947 19

PAY TO THE ORDER OF

* * * ECONOMICA AGENCIA * * * * * * * * * * $ 264,162.70

SIXTY FOUR THOUSAND ONE HUNDRED SIXTY TWO 70/ * * * * DOLLARS

IN PAYMENT CURRENCY AT PAR IN NEW YORK CLEARING HOUSE

AUDITOR

MANAGER

ACCOUNTANT

The Royal Bank of Canada.
68 WILLIAM STREET
NEW YORK.

FOR DEPOSIT ONLY TO THE CREDIT OF

The Royal Bank of Canada

MAY 9 1947

16

CLEARED
NO PROTEST
TELLER FOURTEEN
MAY 8 1947
THE ROYAL BANK OF CANADA
TORONTO, ONT.

Government Exhibit 340

The Royal Bank of Canada

MONTREAL QUE. 11 MAR 27 1947

TO THE ORDER OF

* * * BANCO NACIONAL DE LA AGENCIA * * *

Government Exhibit 340

№ 8- 590994

The Royal Bank of Canada

INCORPORATED 1869

MONTREAL, QUE. MAR 27 1947 19

TO THE ORDER OF

E. ROSENBERG * $ 600.00

SIX HUNDRED 00/100 * DOLLARS

PAYABLE THROUGH THE NEW YORK CLEARING HOUSE

THE CHASE NATIONAL BANK (1-74)

NEW YORK

NOT EXCEEDING

MANAGER

ACCOUNTANT

MAY 6 1947

THE ROYAL BANK OF CANADA

CASHED No. 2

41st STREET

590994

Government Exhibit 340

CO 718 PART 1 REV. 6-41

THE ROYAL BANK OF CANADA

MONTREAL, P.Q. OCT 1 19

DEBIT Tirado Trading Co SA

U. S. Dollars

Payable by demand draft on New York

PARTICULARS	AMOUNT	
Stamp tax Sept 143067 07		
TOTAL		06

ACCOUNTANT

FORM Co 71A

AGENCY OF

THE ROYAL BANK OF CANADA

68 WILLIAM STREET

NEW YORK 5, February 10th 1947

DEBIT

ACCOUNT OF Montreal, Que.

Paid C. J. Devine & Co., Inc., purchase price $1,500,000. U. S. CTFS. OF INDEBTEDNESS 7/8% dated Feb. 1, 1947 due Feb. 1, 1948 $1,500,828.69

Your letter Feb. 6, 1947, file WEH/MK, re: Tivoli Trading Co., S.A.

H. Birmingham
PRO. AGENT

Government Exhibit 340

THE ROYAL BANK OF CANADA

MONTREAL P Q — February 11/47 19

DEBIT

TIVOLI TRADING CO. S.A.

PARTICULARS	AMOUNT	
Payment to C.J. Devine & Co. Inc., purchase price $1,500,000. U.S. Ctfs. of Indebtedness 1% dated Feb. 1, 1947 due Feb. 1/48.	1,500,828	89
Stamp		06
TOTAL	$1,500,828	95

ACCOUNTANT

Government Exhibit 204

Government Exhibit 205

Government Exhibit 340

Montreal Que. March 27 1947

The Royal Bank of Canada

MONTREAL BRANCH

[illegible] Hannes & Company Ltd. S.A. [illegible]

One Million and Forty Three Thousand and Thirty Five [illegible]

U S Dollars Acct.

[illegible] U. S. Funds

TIVOLI TRADING CO.

[illegible]

Government Exhibit 340

Montreal Que. 19 No

The Royal Bank of Canada

MONTREAL BRANCH

York

The Royal Bank of Canada or Order $ 8,2[illegible]

Eight Hundred and Two Thousand Nine Hundred and Forty-Nine 75/100 Dollars

TIVOLI TRADING CO. S.A.

Acceptance for Last Remittance U.S. Funds

[illegible] Pres

Government Exhibit 340

Form SF 72
Revised 9-46

THE ROYAL BANK OF CANADA

MAR 2 1947 19

Please issue Dfts (Draft or Money Order) on NY

in favor of List Attached

Foreign Currency 802949.02 Local Currency 802949.02

Rate Cross entry Commission

Stamp Tax

802949.02

30 ck

It is understood that no refund need be made by you except against surrender of the draft/money order and then only in local currency at the rate you would be willing to apply at the time of refund to purchases of the exchange involved.

Debit Invoice Trading Co.

(Signature of Applicant)

805

Wired

U Ld

5909[illegible]

[illegible]

5[illegible]

Draft No.

Government Exhibit 340

NEW YORK BANK DRAFTS

FOR: E. ROSENBERG $ 2x60 ~~1200.00~~

FOR: LA ECONONICA AGENCIAS, S.A.

$264,162.70

FOR: LA ECONONICA AGENCIAS, S.A.

$264,162.70

FOR: COMPANIA EXPORTADORA FERNANDINA, S.A.

$272,423.62

11/4/47 H. H. Klein $1000.00

Government Exhibit 340

FORM R 260 (SPECIAL NEW YORK) ISSUED 9-36

STOCK AND BOND TRADING

AUDIT COPY

BUYING ORDER [illegible] 19 BY LETTER / TELEGRAM NO. B 8576

ON ACCOUNT OF: Jewate Trading [illegible]

BROKER OR DEALER WITH WHOM PLACED: [illegible] Co. 2

THEIR REFERENCE:

INSTRUCTIONS GOOD UNTIL _____ 19__

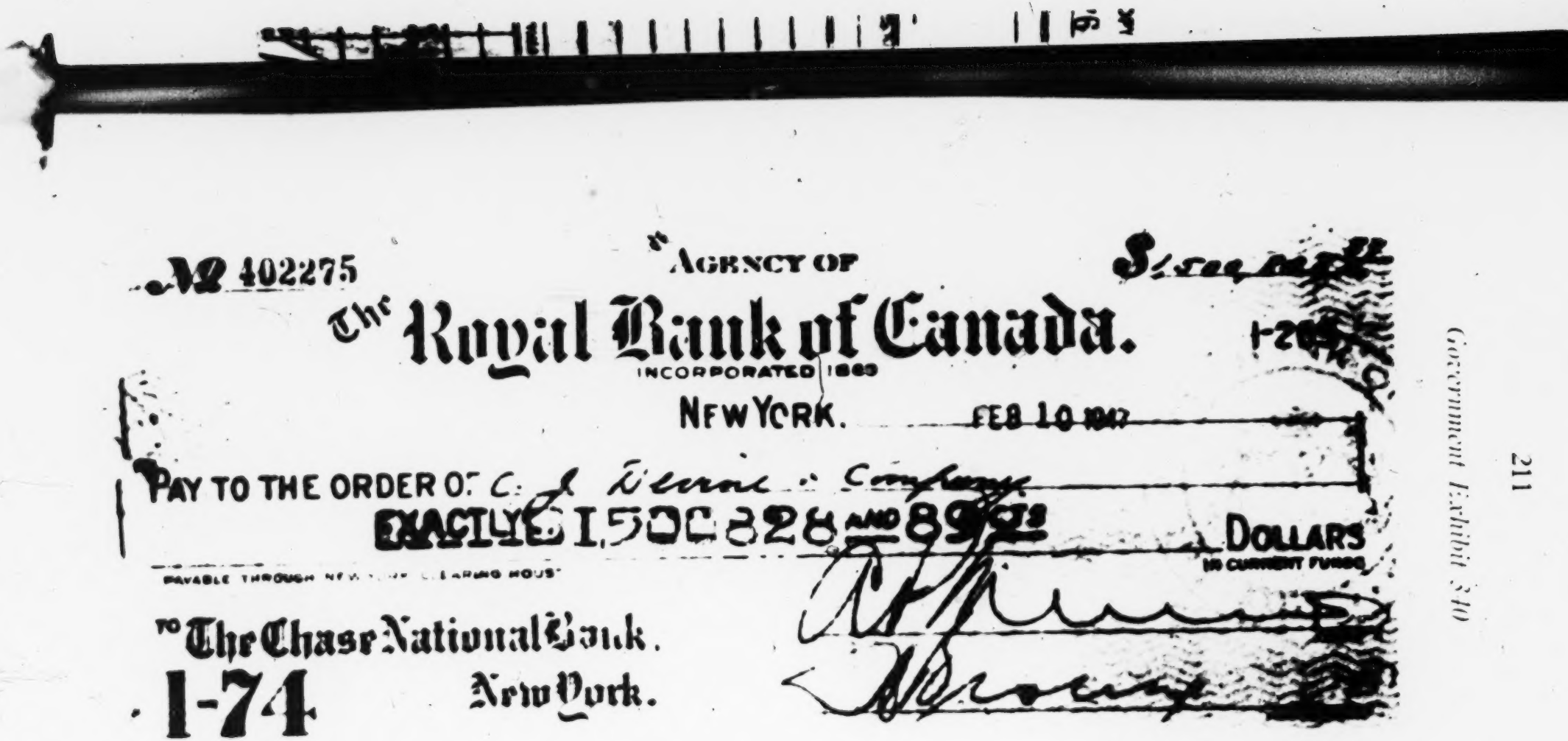
STOCKS OR BONDS ORDERED

QUANTITY	DESCRIPTION	PRICE	INSTRUCTIONS
1800000	Mo Cent 7/9 2/45		ASK
			JRB

STOCKS OR BONDS PURCHASED

DATE	QUANTITY	DESCRIPTION	BOUGHT AT	TOTAL COST	DISPOSITION	DATE	INITIALS
2/7/47	1800000	11	.54	15CU529.59		[illegible]	
				[illegible]	[illegible]	[illegible]	
					Completed		

Government Exhibit 340



No 402275

AGENCY OF

The Royal Bank of Canada.

INCORPORATED 1869

NEW YORK. FEB 10 1947

PAY TO THE ORDER OF C. J. Devine & Company

EXACTLY $1,500,828 AND 89 CTS DOLLARS

IN CURRENT FUNDS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO The Chase National Bank.

1-74 New York.

Government Exhibit 340

United States of America

TREASURY DEPARTMENT

WASHINGTON

(Date)

O WHOM THESE PRESENTS SHALL COME, GREETING:

ertify that the annexed is a true copy of the joint income tax return, ached papers, of Morris O. Alprin and Sadie F. Alprin, 1350 East 27th Brooklyn, New York, for the year 1952

GOVERNMENT'S EXHIBIT U. S. Dist. Court S. D. of N. Y. JUN 1 1955

f in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. [illegible]

?

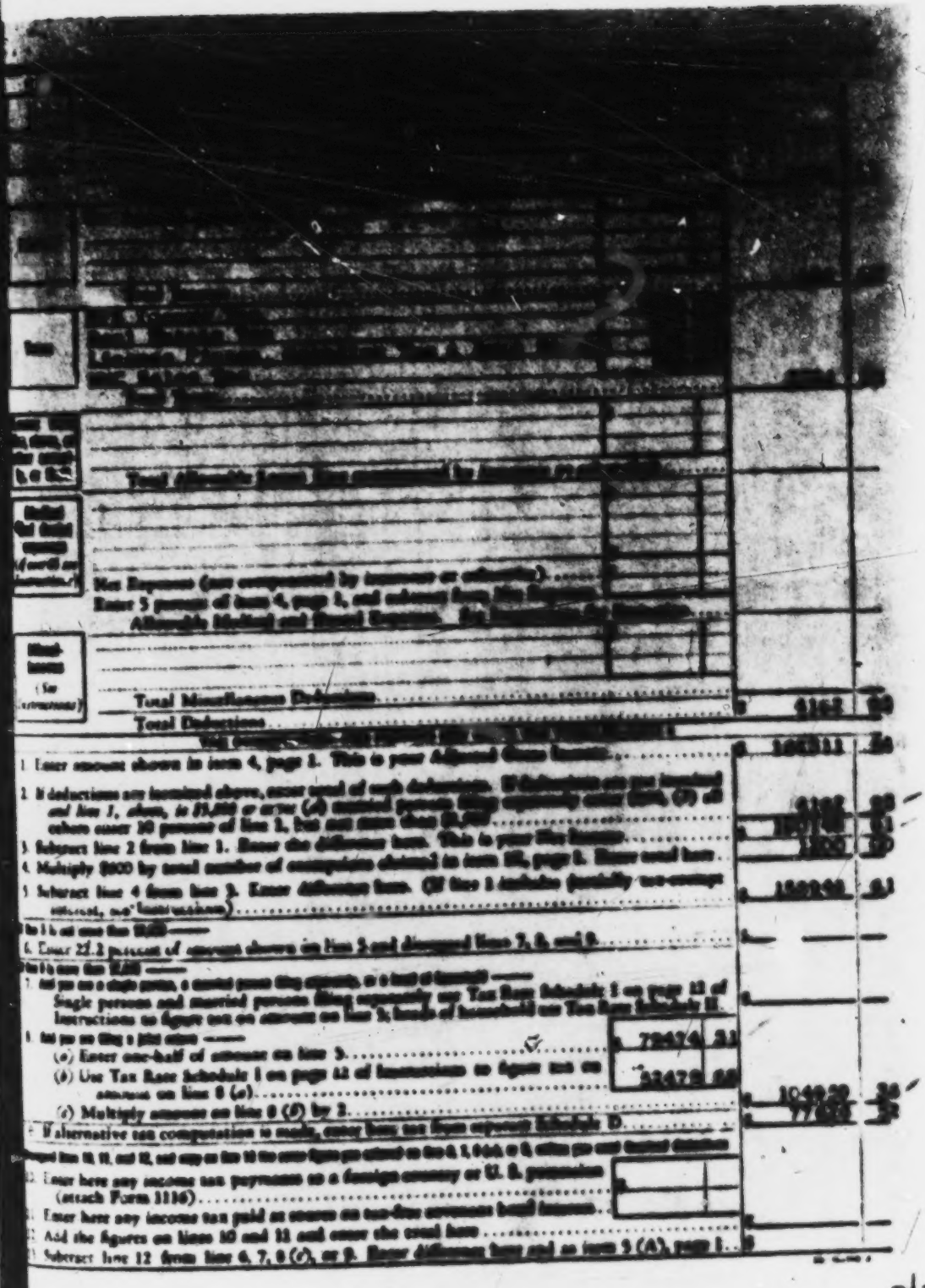
partment—Stock Form 2217 (Rev. Nov. 1949)

16 64677-3

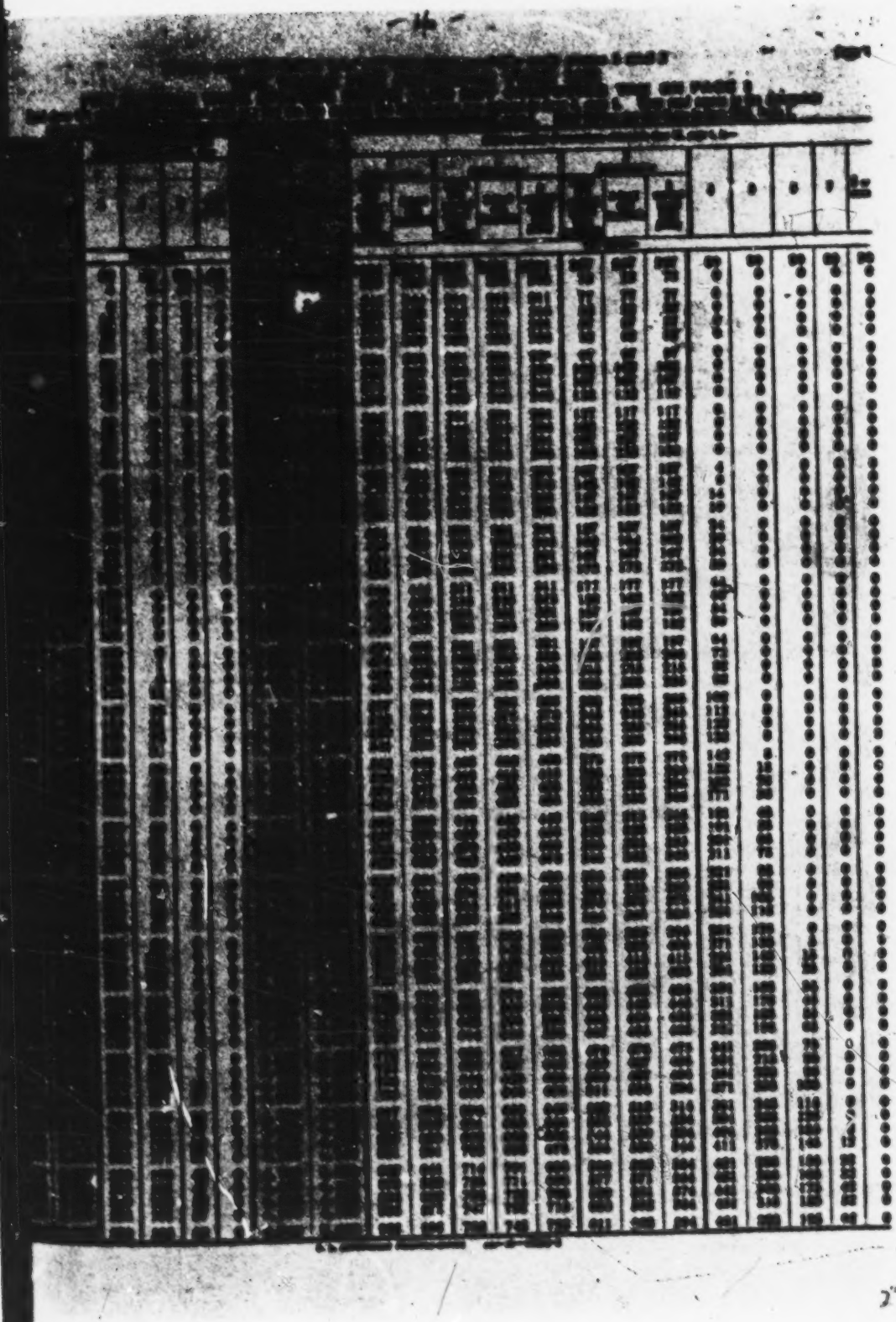
Government Exhibit 347

213

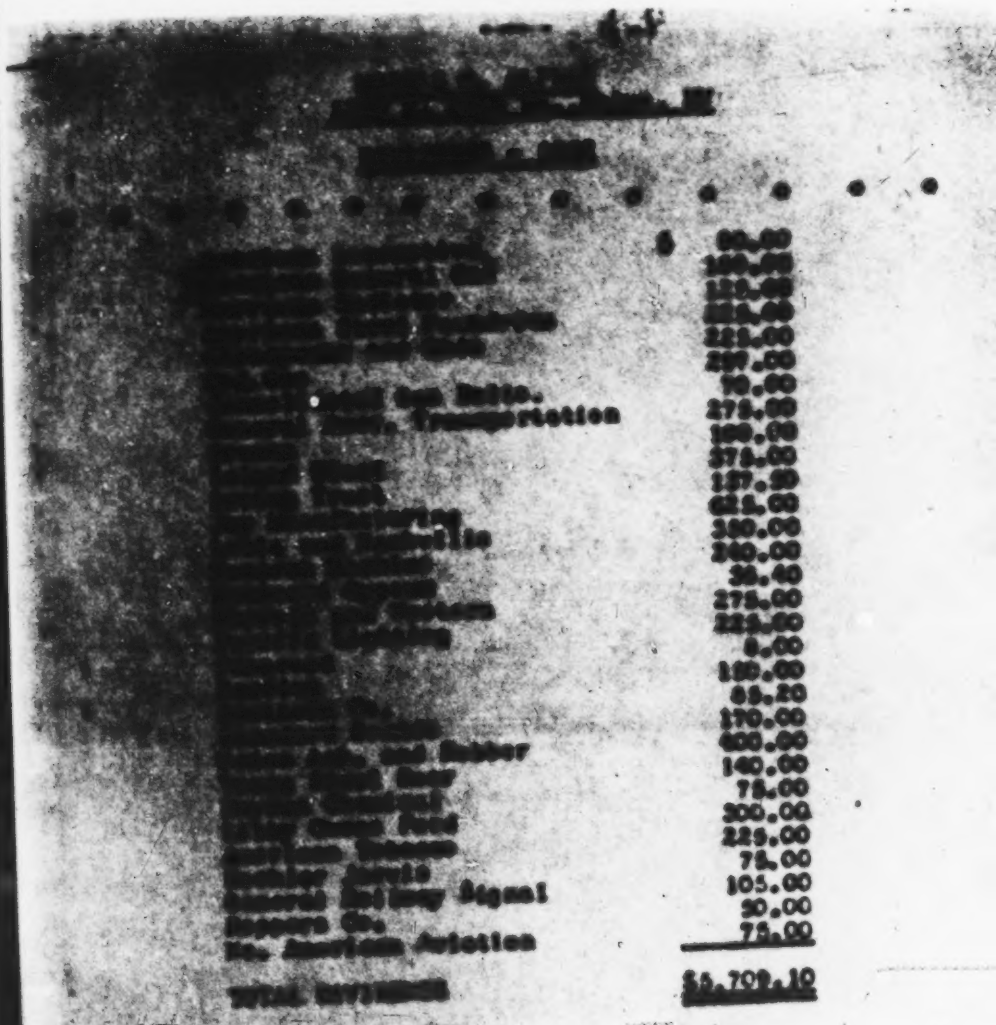
Government Exhibit 347



Government Exhibit 347



Government Exhibit 347



Government Exhibit 317

4-5

NOT SUBJECT

Page 3

COMPUTATION OF SELF-EMPLOYMENT TAX
(For Old-Age and Survivors Insurance)

Name of self-employed person _____

Name of business, if any, subject to self-employment tax _____

Net profit (or loss) shown on line 25, page 1	$		
Loss of business property shown on line 15, page 2			
Total of lines 26 and 28			$
Less: Net income (or loss) from excluded services or sources included in line 26. Specify excluded services or sources			
Net earnings from self-employment (line 26 less line 27)			$
Net earnings (or loss) from self-employment from partnerships, joint ventures, etc. (from column 10, Schedule K, Form 1065)			
Total net earnings (or loss) from self-employment (line 28 plus line 29). (If total of net earnings is under $400, do not make any entries below)			$
Maximum amount subject to self-employment tax	$ 3,600	00	
Less: Wages paid to you during the taxable year which were subject to withholding for old-age and survivors insurance. (If such wages exceed $3,600, enter $3,600)			
Maximum amount subject to self-employment tax after adjustment for wages	$		
Self-employment income subject to tax—Line 30 or 33, whichever is smaller			$
Self-employment tax—2½ percent of amount on line 34. Enter here and as item 5 (B), page 1, Form 1040			$

FILL IN ITEMS BELOW BUT DO NOT DETACH

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

U. S. REPORT OF SELF-EMPLOYMENT INCOME

(For Federal Old-Age and Survivors Insurance)

1952

If taxable year 1952 or fiscal year beginning _____, 1952, and ending _____, 195...

Name of business subject to self-employment tax _____

IF YOU KNOW THE SOCIAL SECURITY ACCOUNT NUMBER OF THE PERSON NAMED BELOW

Enter total net earnings from self-employment shown on line 30 above $ _____

ENTER BELOW, NAME OF SELF-EMPLOYED PERSON AND BUSINESS ADDRESS

(Name)

ADDRESS (Street and number, or rural route)

(City or town, postal zone number) (State)

Enter wages shown on line 32 above $ _____

Enter self-employment income shown on line 34 above $ _____

Government Exhibit 347

6-5

PURPOSE OF THIS FORM

Schedule C (Form 1040).—Schedule C serves two purposes. First, it provides for the determination of net profit (or loss) from business or profession to be used in computing income tax. Second, it provides for the computation of the self-employment tax in accordance with Subchapter E, Chapter 1 of the Internal Revenue Code, as added by the Social Security Act Amendments of 1950.

Schedule C-a (Form 1040).—The lower portion of page 3, Schedule C, which is designated as Schedule C-a (Form 1040), is designed to provide the Social Security Administration with the information on self-employment income necessary for old-age and survivors insurance purposes.

INSTRUCTIONS

SELF-EMPLOYMENT TAX

In general, every individual deriving income during the taxable year from a trade or business carried on by him or from a partnership of which he is a member is subject to the self-employment tax, the computation of which is made on lines 24 through 35.

"Net earnings from self-employment" (line 30) is the gross income derived by an individual from any trade or business carried on by him, less the allowable deductions attributable to such trade or business, plus his share of self-employment net earnings (or loss) from a partnership of which he is a member.

EXCLUSIONS

In determining the amount of net earnings from self-employment report on line 27 income from the following sources or deductions attributable thereto:

1. Certain professions.—Income from the performance of service as a physician, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, optometrist, Christian Science practitioner, architect, certified public accountant, accountant registered or licensed as an accountant under State or municipal law, full-time practicing public accountant, funeral director, or professional engineer, or income from the performance of such service by a partnership.

2. Religious services.—Income from the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

3. Farming.—Income from farming or from any other business in which, if the business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor;

4. Employees and public officials.—Income from the performance of service as:

(a) a public official, including a notary public;

(b) an employee or employee representative under the railroad retirement system, or

(c) an employee. "Employee" includes among others:

(1) an agent-driver or commission driver engaged in distributing meat, vegetable, fruit, and bakery products, beverages (other than milk), or laundry or dry cleaning services;

(2) a full time life insurance salesman;

(3) a home worker performing work subject to licensing requirements under State law; and

(4) traveling or city salesmen generally, engaged upon a full time basis for their principals (except for sideline sales activities on behalf of another person).

NOTE.—The income of an employee over the age of 18 from the sale of newspapers or magazines to an ultimate consumer is subject to the self-employment tax if the income consists of retained profits from such sales.

5. Real estate rentals.—Rentals from real estate, except rentals received in the course of a trade or business as a real estate dealer. Payments for the use or occupancy of rooms or other space where services are also rendered to the occupant, such as rooms in hotels, boarding houses, apartment houses furnishing hotel services, tourist camps, tourist homes, or space in parking lots, warehouses, or storage garages do not constitute rentals from real estate and therefore are included in determining net earnings from self-employment.

6. Interest and dividends.—Dividends on shares of stock, and interest on bonds, debentures, notes, certificates, or other evidences of indebtedness, issued with interest coupons or in registered form by a corporation, or by a government or political subdivision thereof, unless received in the course of a trade or business as a dealer in stocks or securities; and

7. Property gains and losses.—Gain or loss (A) from the sale or exchange of a capital asset, (B) to which section 117(j) is applicable, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (a) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (b) property held primarily for sale to customers in the ordinary course of the trade or business.

Net operating losses.—In determining the net earnings from self-employment, no deduction for net operating losses of other years shall be allowed.

MORE THAN ONE TRADE OR BUSINESS

If an individual is engaged in more than one trade or business, his net earnings from self-employment are the aggregate of his net earnings from self-employment of each trade or business carried on by him. Thus, the loss sustained in one trade or business will operate to reduce the income derived from another trade or business.

JOINT RETURNS

Where husband and wife file a joint return, page 3 of Schedule C (Form 1040) should show the name of the one with self-employment income. Where husband and wife each have self-employment income, a separate Schedule C must be attached for each. In such cases the total of amounts shown on line 23 of each separate schedule should be entered on line 1, Schedule C Summary, page 2, Form 1040, and the aggregate self-employment tax (line 35) should be entered as item 5(B), page 1, Form 1040.

COMMUNITY INCOME

For the purpose of computing net earnings from self-employment, if any of the income from a trade or business is community income, all the income from such trade or business is considered the income of the husband unless the wife exercises substantially all the management and control of the trade or business, in which case all of such income is considered the income of the wife.

If separate returns are filed by the husband and wife, a complete Schedule C should be attached to the return of the one with self-employment income. Community income included on such a schedule must, however, be allocated between the two returns (on line 1, Schedule C Summary, page 2, Form 1040) on the basis of the community property laws.

In computing his aggregate net earnings from self-employment, a partner should include his entire share of such earnings from a partnership. No part of that share may be attributed to the partner's wife (or husband) even though the income may, under State law, be community income.

SCHEDULE C-a (Form 1040)

To assure proper credit to your account, be sure to enter your name and social security account number on Schedule C-a (Form 1040) exactly as they are shown on your social security card. If you do not have a social security account number, you must get one in time to enable you to file your return on or before the due date. These account numbers are obtainable from any of the approximately 500 Social Security Administration Field Offices throughout the country. The telephone directory or your local post office will give you the address. Do not delay filing your return beyond the due date even though you have not obtained your social security account number.

Regardless of whether a joint or separate returns on Form 1040 are filed by husband and wife, Schedule C-a (Form 1040) should show only the name of the one with the self-employment income.

[illegible]

Government Exhibit 347

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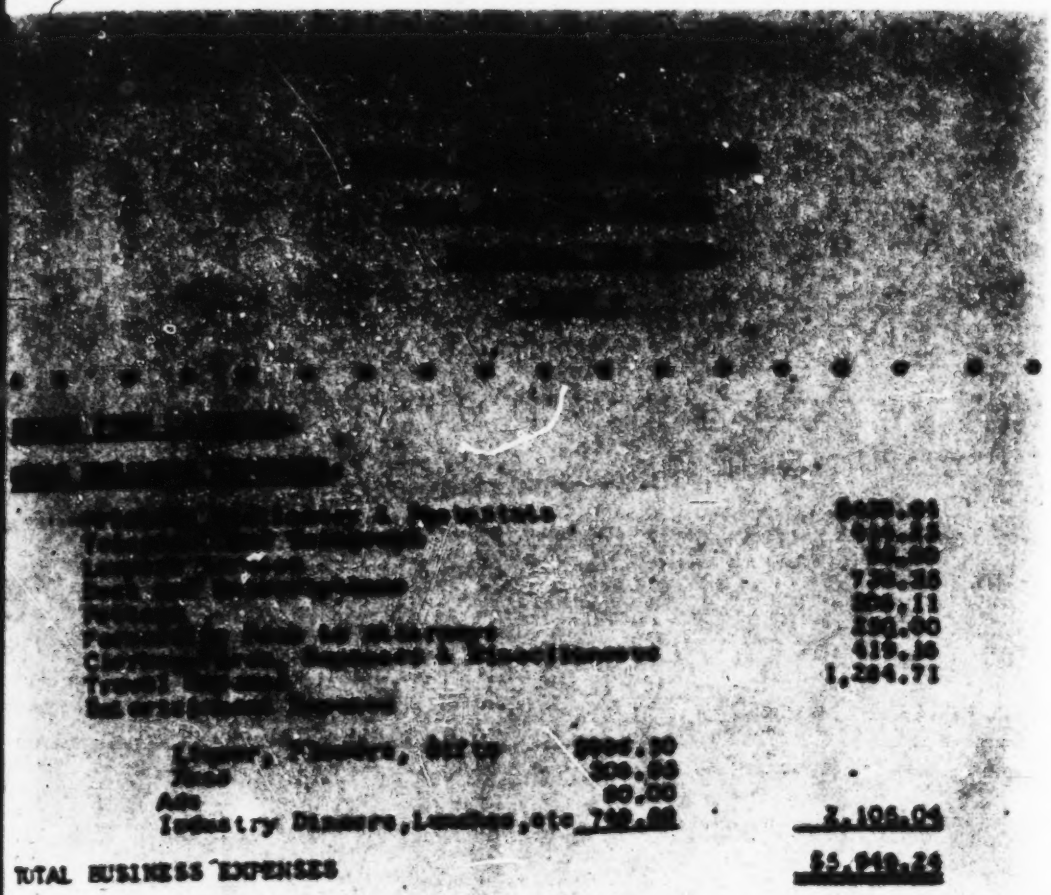


[redacted]		[illegible]
[redacted]		[illegible]
[redacted]		[illegible]
[redacted]		[illegible]
[redacted]		[illegible]
[redacted]		[illegible]
[redacted]		[illegible]
[redacted]		1,284.71
[redacted]		
Liquor, Flowers, Gifts	[illegible]	
Ads	[illegible]	
Ads	80.00	
Industry Dinners, Lunches, etc	[illegible]	2,106.04
TOTAL BUSINESS EXPENSES		[illegible]

37

United States of America

TREASURY DEPARTMENT

WASHINGTON

(Date)

T[illegible] WHOM THESE PRESENTS SHALL COME, GREETING:

[illegible]ertify that the annexed is a true copy of the joint income tax return, w[illegible]echei papers, of Albert Roer and Kate Roer, 60 Gramercy Park North, N[illegible], New York, for the year 1950

GOVERNMENT'S
EXHIBIT
S. Dist. Court
S. D. of N. Y.
Jun. 1 1955

o[illegible]n this Department.

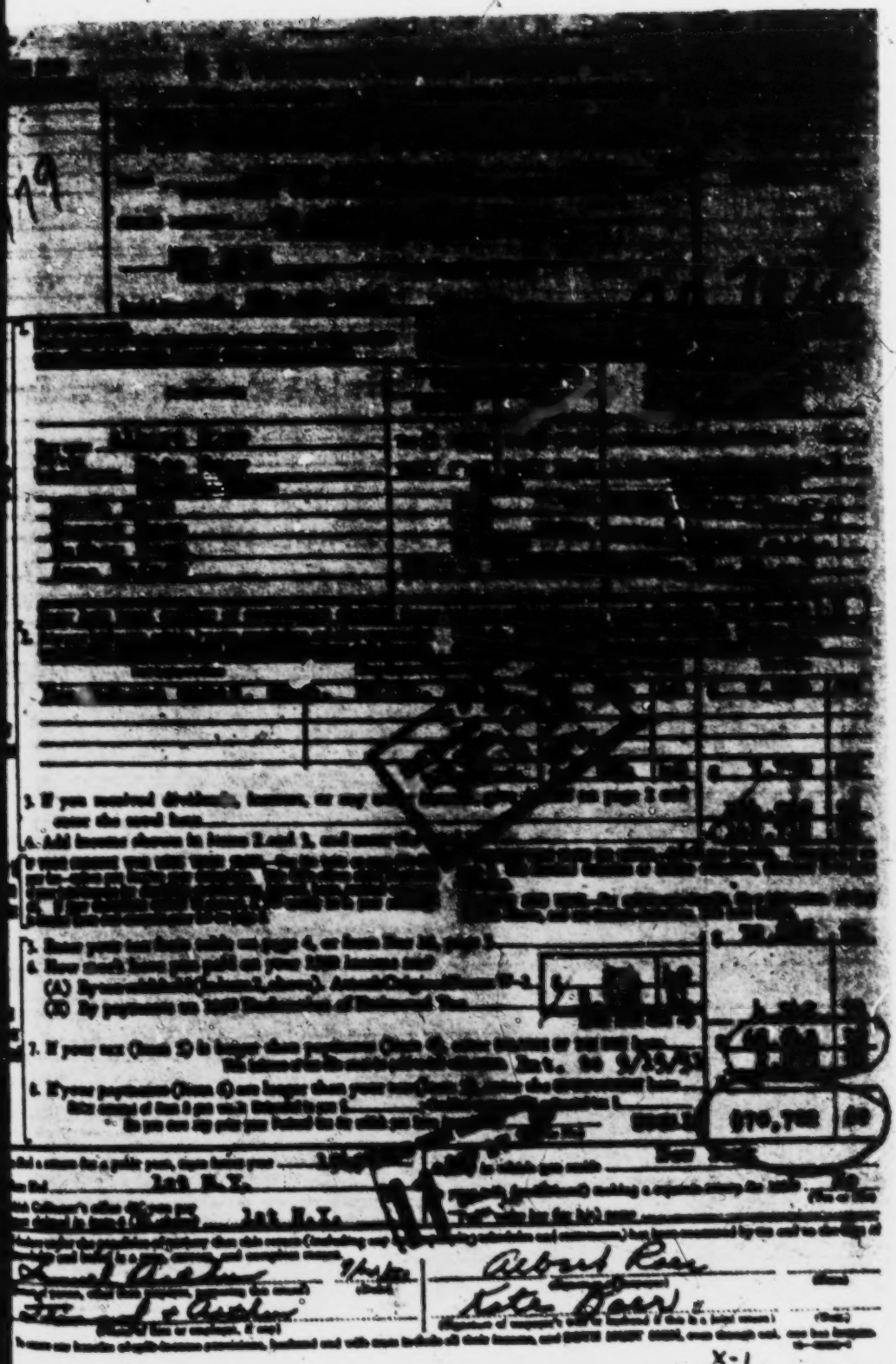
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury.

[illegible]

Government Exhibit 348

Government Exhibit 348



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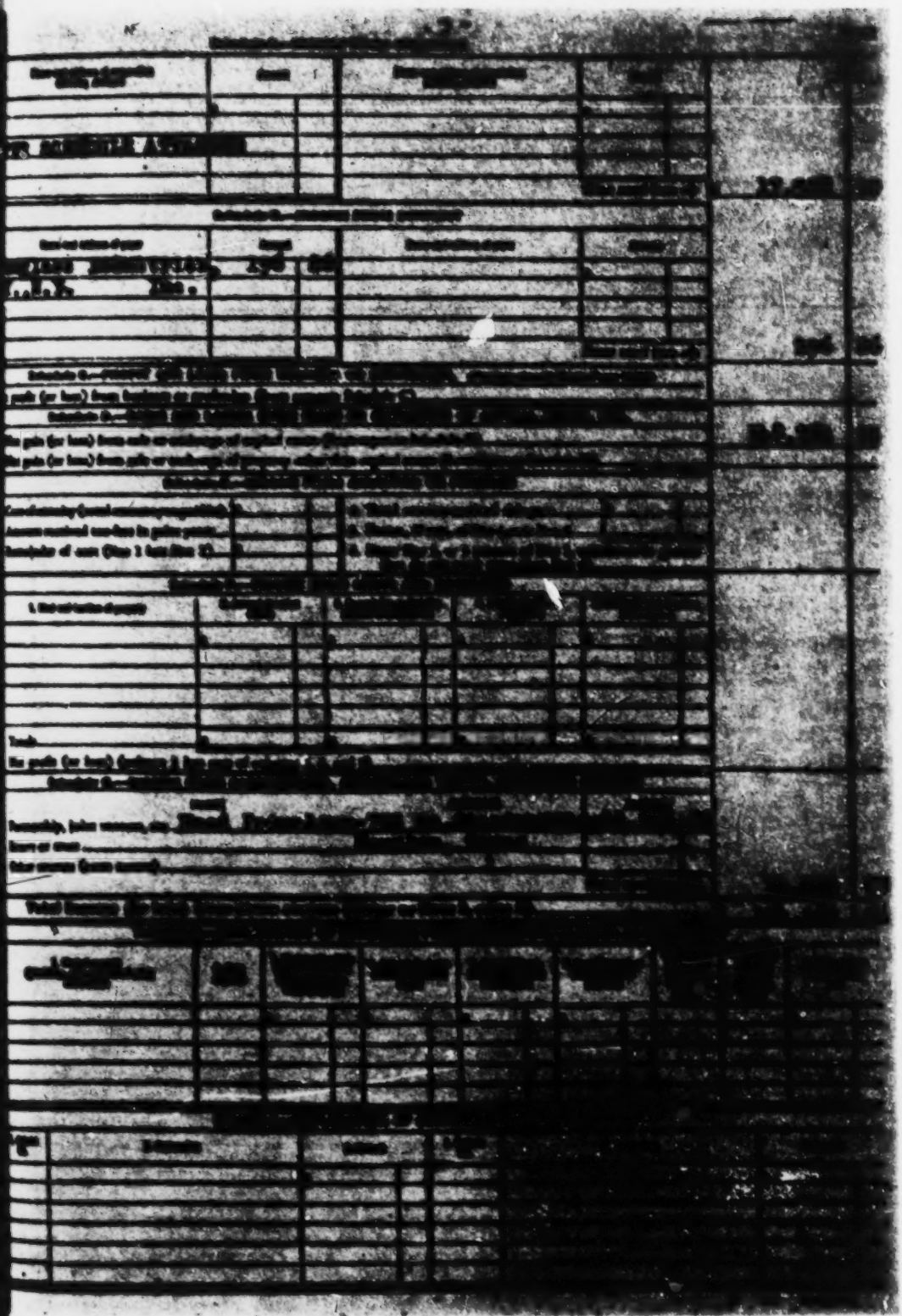
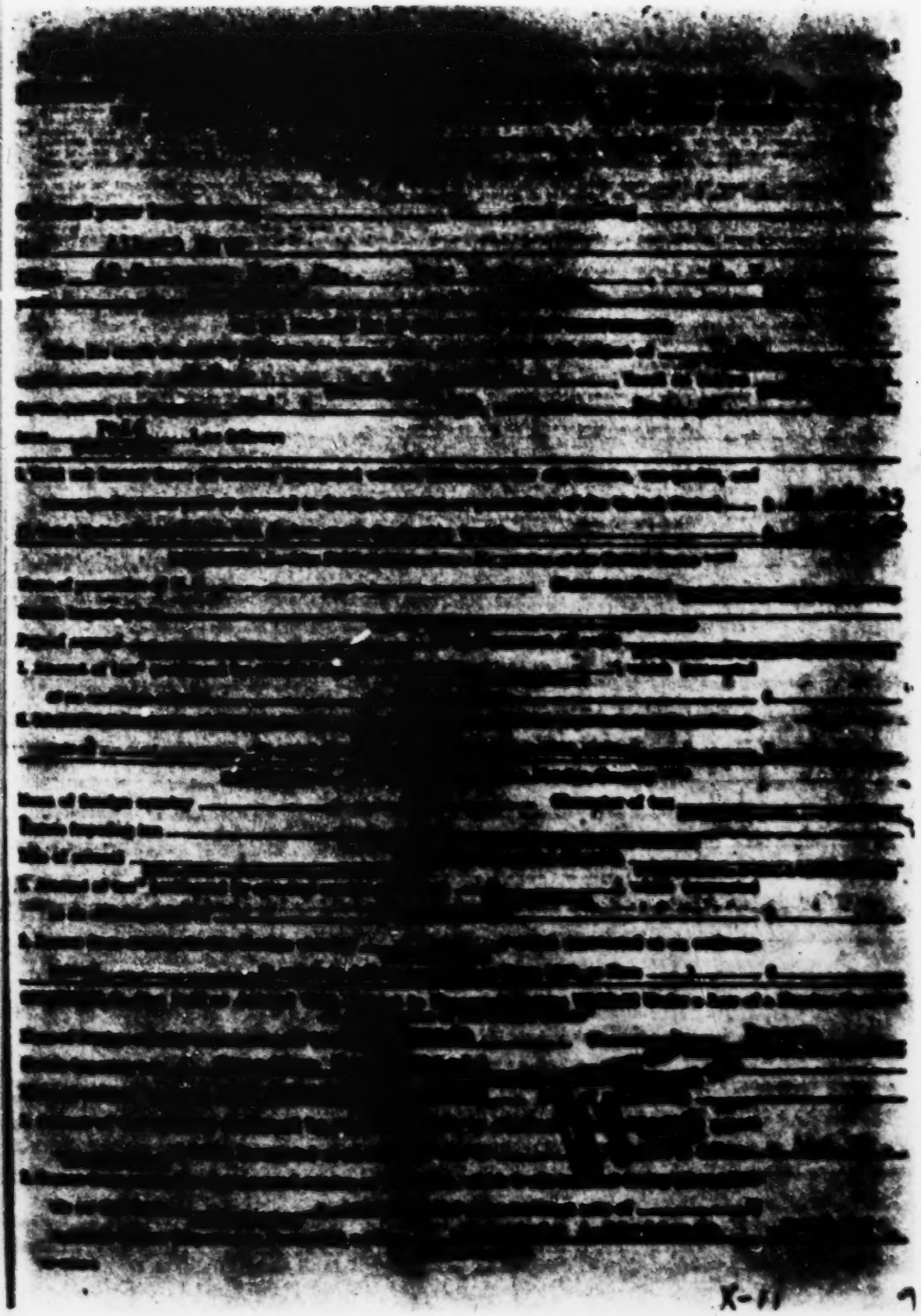
Government Exhibit 518



Government Exhibit 548



[illegible]

Partnership, estate, or trust [illegible]

Fiduciary (if estate or trust) [illegible]

Character and [illegible]

[illegible]

Name of foreign country or possession [illegible]

Statute imposing tax [illegible]

Date of accrual [illegible]

1. Total tax paid by partnership or [illegible]

[illegible]) equals in dollars [illegible]

2. Claimant's share of such [illegible]

3. Total net income derived from [illegible]

4. That portion of such income which [illegible]

[illegible]

SCHEDULE F—Tax Paid or Accrued in a Foreign Country or [illegible] by a Partnership, [illegible]

Partnership, estate, or trust _____ (Address) _____ (Employer's identification number)

Fiduciary (if estate or trust) _____ (Address) _____ (Employer's identification number)

The attached _____ (Partnership or fiduciary) return is based on income _____ (Identify the taxable year begun _____, 19__, and ended _____, 19__

Name of foreign country or possession of U. S. _____ Character of tax _____ (Income, war profits, or excess profits)

Statute imposing tax _____ (Give the official title and citation or cite to be easily identified)

Date of accrual _____ (Check date of accrual and date of payment (if paid) [illegible]) Date of payment (if paid) _____ (Check date of accrual and date of payment (if paid) [illegible])

1. Total amount of this tax payment or accrual (evidenced by attached receipt or return) _____ (In foreign currency)

which (converted at an exchange rate of _____) equals in dollars _____ $ _____

2. Total net income reported on partnership or fiduciary [illegible] _____

3. That portion of such income which was derived from sources within this foreign country or possession of United States _____

[illegible]

[illegible]

10

[illegible]

Government Exhibit 548

[redacted]

1958

CANADIAN DIVIDENDS

	DIVIDEND	CANADIAN TAX WITHHELD
St. Lawrence Corp.	$ 90.24	$ 13.54
Distillers Corp. Seagram Ltd.	2,602.00	390.30
United Distillers Ltd.	241.99	36.30
Canadian Western Lumber Ltd.	44.24	6.64
TOTALS	$2,978.47	$446.78

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2-3

X-12

Government Exhibit 348

2-4

[illegible]

DIVIDENDS - 1950

DESCRIPTION	DATE	AMOUNT	[illegible]
Middle South Utilities	1-3-50	$ 106.42	
United Gas Corp.	1-3-50	140.50	
St.Lawrence Corp Pfd.	1-25-50	90.24	$ 13.[illegible]
Va.IronCoal & Coke Pfd.	2-2-50	131.25	
Middle South Utilities	4-3-50	106.43	
United Gas Corp.	4-3-50	140.50	
Va.IronCoal & Coke Pfd.	5-1-50	131.25	
Western Auto Supply	6-1-50	225.00	
Standard Oil of N.J.	6-12-50	500.00	
Philco Corp.	6-12-50	350.00	
National Steel	6-13-50	300.00	
Allied Chemical	6-20-50	1,000.00	
Middle South Utilities	7-3-50	106.43	
United Gas Corp.	7-3-50	140.50	
Borg-Warner	7-3-50	300.00	
American Tel & Tel	7-17-50	675.00	
Va.Iron Coal & Coke Pfd.	7-31-50	131.25	
A.V. Byers Co.	8-2-50	250.00	
Western Auto Supply	9-1-50	525.00	
Philco Corp.	9-13-50	525.00	
Allied Chem & Dye Corp.	9-20-50	1,000.00	
United Gas Corp.	10-2-50	140.50	
Middle South Utilities	10-2-50	106.42	
Amer. Tel & Tel	10-16-50	675.00	
Va.Iron Coal & Coke Pfd.	10-30-50	131.25	
A.V. Byers	11-1-50	250.00	
Western Auto Supply	12-1-50	1,575.00	
U.S. Steel Corp.	12-11-50	750.00	
Philco Co.	12-15-50	560.00	
Northern Pacific Ry.	12-21-50	500.00	
A.V. Byers	12-26-50	500.00	
Amer. Locomotive	12-27-50	200.00	
Standard Oil of N.J.	6-12-50	300.00	
DistillersCorp.Sgrms Ltd	6-15-50	543.00	81.45
Consol. Edison Co.	6-15-50	120.00	
Standard Oil of N.J.	9-12-50	375.00	
Consol.Edison Co.of N.Y.	9-15-50	120.00	
DistillersCorp.Sgrms Ltd.	9-15-50	543.00	81.45
Standard Oil Co of N.J.	12-12-50	525.00	
Consol.Edison Co.of N.Y.	12-15-50	150.00	
Dist.Corp.Seagrams Ltd.	12-20-50	1,516.00	227.40
United Distillers,Ltd.	2-3-50	241.99	36.30
Canadian Western Lumber Ltd		44.24	6.64
Carolina Power		6.00	
Middle South Utilities		31.63	
Amer. Radiator		750.00	
TOTALS		$17,528.30	$446.78

x 6

Government Exhibit 348

2-5

[redacted]

1959

CONTRIBUTIONS

United Jewish Appeal	$2,250.00
Federation Jewish Philanthropies	300.00
National Council Young Israel	25.00
Temple Beth El	120.00
Nat'l.Child Center in Israel	5.00
Beth Chinuch Yeladim	5.00
Hebrew Institute Boro Park	10.60
Disabled American Veterans	5.00
New York Guild Jewish Blind	5.00
American Fund for Israel Institutions	50.00
Industrial Home for Blind	5.00
Rehabilitation Center of Jerusalem	5.00
Henry St. Settlement	5.00
Red Magen Dovid	5.00
Yeshiva University	5.00
Cathedral Church of St. John	12.50
Guild Daughters of Jacob	25.00
B'nai Brith	6.00
Father Flanagan's Home	5.00
Red Cross, Cancer Fund, Heart Fund, Polio Fund & various other religious & charitable organizations	825.00
TOTAL	$3,723.10

X-7

[redacted]

1950 BUSINESS EXPENSES OR
EXPENSES IN CONNECTION WITH THE PRODUCTION OF INCOME

1. Accountants Fee	$ 750.00
2. During 1950 I financed two trips to Portugal with the idea of starting a business of importing lobster tails. It was finally decided that this would not be a profitable venture, and all the money I advanced was lost. The total advanced to my representative for expenses and also for cable charges was	3,138.85
3. I own 20% of the stock of Industria Optica Mexicana, S.A., a Mexican corporation engaged in the manufacture of optical goods. In June 1950 it was necessary for me to go to Mexico to attend a directors meeting for the purpose of determining policy. The expense of this trip was	879.00
4. I paid a legal fee to John Morris of New York, N.Y. for certain advice in connection with my interest in the Industria Optica Mexicana, S.A., mentioned in the above (#3) paragraph	170.00
5. During 1950 I made several trips to Montreal, Toronto, and Vancouver, Canada to investigate the possibility of starting a business of importing bulk Canadian whiskey. Total expense was	1,572.80
6. I own 50% of the stock of Roder Realty Corp. In February 1950 I incurred legal expenses in connection with a proposed sale of my stock in this corporation and having this sale rescinded. The attorny's fee for this matter was	2,500.00
7. My wife holds certain notes of Frend's Bootery, and in connection with same incurred a legal fee in the amount of $25.00 for the drawing of a contract.	25.00
8. I made certain investments in some oil wells in Texas. I made a trip to Houston, Texas for the purpose of investigating this proposition. I incurred a total expense of	959.40
TOTAL BUSINESS EXPENSES	$9,995.05

Government Exhibit 348

2-1

Schedule D (File with Form 1040) **1950**

SCHEDULE OF GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

For Calendar Year 1950 or other taxable years ending after Sept. 30, 1950, but before Dec. 31, 1951

Name and Address Albert & Kate Roer-60 Gramercy Park North, N.Y., N.Y.

(1) CAPITAL ASSETS

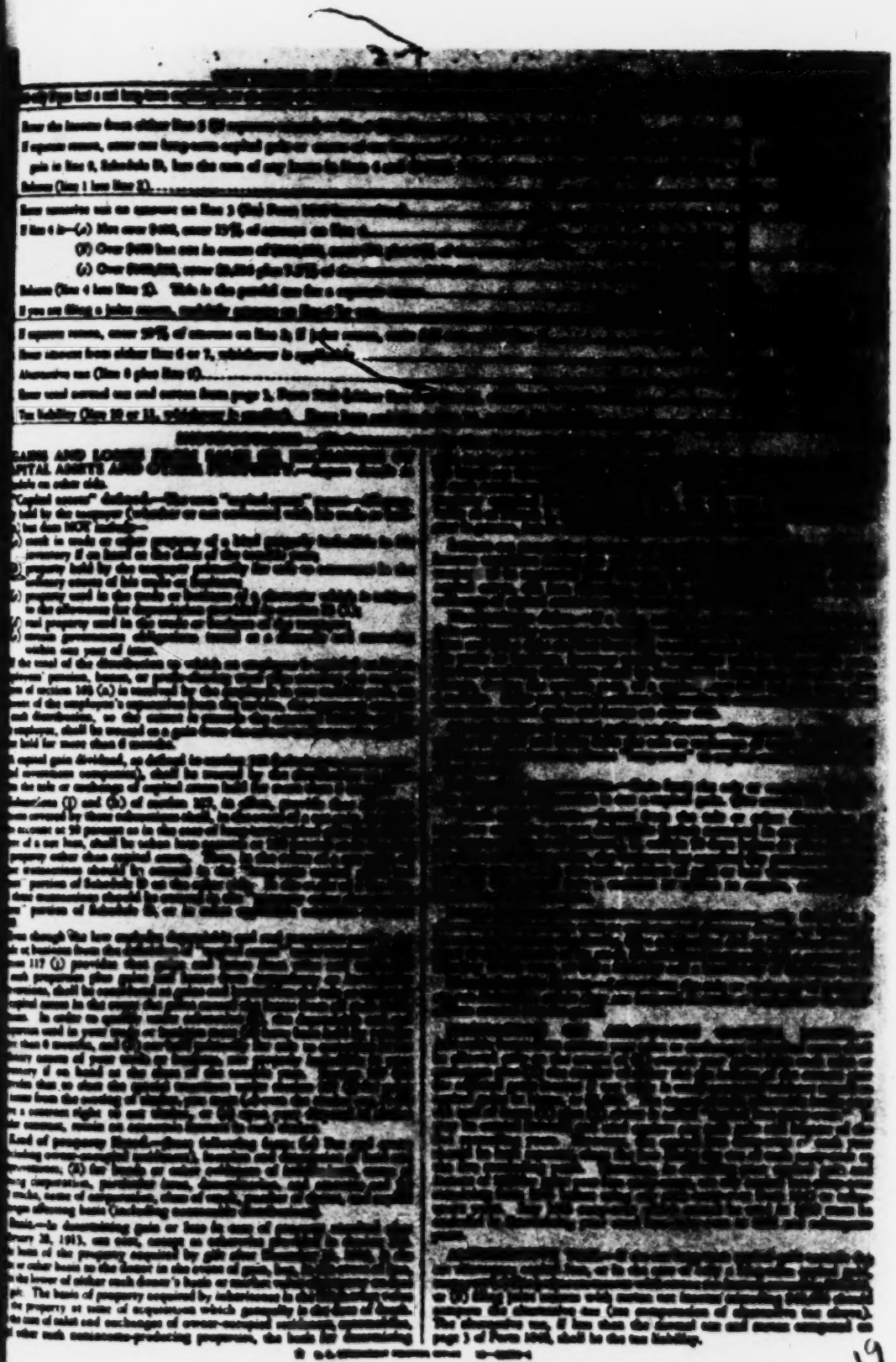
1. Kind of property (if necessary, attach statement of [illegible])	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (actual price)	5. Depreciation allowed (or allowable) since acquisition or March 1, 1950 (attach statement)	6. Cost or other basis and cost of subsequent improvements (if not purchased, attach explanation)	7. Expense of sale
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS						
			$	$	$	$
Totals			$	$	$	$
2. Net short-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 1) Per Schedule Attached						$ 2097 78
3. Enter your share of the net short-term gain or loss from partnerships and common trust funds						
4. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 2 and 3						$ 2097 78
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS						
			$	$	$	$
Totals			$	$	$	$
6. Net long-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 5) Per Schedule Attached						293331 13
7. Enter the full amount of your share of the net long-term gain or loss from partnerships and common trust funds						
8. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 6 and 7						293331 13
9. Enter 50 percent of line 8. This is the amount to be taken into account in summary below						146665 57
10. Summary of Capital Gains (use only if gains exceed losses in lines 4 and 9):						
(a) Net gain for 1950 (either the sum of gains or difference between gains and losses in lines 4 and 9)						148763 35
(b) Capital loss carry-over, 1945–1949 inclusive						
(c) If line (a) exceeds line (b), enter this excess here and on line 1, Schedule D, page 2, Form 1040						148763 35
(d) If line (b) exceeds line (a), enter the excess here and use line (c) to determine allowable loss						$
(e) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (d); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses; or (3) $1,000						$
(f) Enter here the amount on line (c) plus any capital loss carry-over from 1945 which was not used against line (a) or in line (e)						$
(g) Subtract line (f) from line (d) and enter the remainder here. This is your capital loss carry-over to 1951						$
11. Summary of Capital Losses (use only if losses exceed gains in lines 4 and 9):						
(a) Net loss for 1950 (either the sum of losses or difference between losses and gains in lines 4 and 9)						$
(b) Capital loss carry-over, 1945–1949 inclusive						
(c) Total of lines (a) and (b)						$
(d) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (c); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses; or (3) $1,000						$
(e) Enter here the amount on line (d) plus the amount of any 1945 capital loss carry-over not used in line (d)						$
(f) Subtract line (e) from line (c) and enter the remainder here. This is your capital loss carry-over to 1951						$

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (actual price)	5. Depreciation allowed (or allowable) since acquisition or March 1, 1950 (attach statement)	6. Cost or other basis and cost of subsequent improvements (if not purchased, attach explanation)	7. Expense of sale
			$	$	$	$
Totals			$	$	$	$
Total net gain or loss (columns 4 plus 5 minus the sum of columns 6 and 7). Enter on line 2, Schedule D, page 2, Form 1040						$

See other side for Instructions and Computation of Alternative Tax

Government Exhibit 348



Form 1040-ES
U. S. Treasury Department
Internal Revenue Service

10 0160

DECLARATION OF ESTIMATED TAX

Copy 7-3-47 SJV

NAME HYMAN H. KLEIN
(Please print. If this declaration is for a husband and wife, use both first names)

Social Security No., if any 217-05-8716

ADDRESS 122 EAST 42 STREET, NEW YORK 17, N.Y.
(Please print) (Street and number or rural route) (City or town, zone number) (State)

1947

If this declaration is not for calendar year 1947, show here ending date of your fiscal year .....

1. Estimated Income Tax for 1947	$ 1203500	00
2. Estimated Income Tax withheld and to be withheld during entire year 1947	3500	00
3. ESTIMATED TAX after deducting estimated tax withheld (item 1 less item 2)	$ 1200000	00
4. Less: Credit for overpayment shown on 1946 return (allowable only if credit was elected in item 10, page 1, Form 1040, for 1946) $		
5. If this is an amended declaration, enter payments made on account of prior declarations for this year		
6. Unpaid balance of ESTIMATED TAX (item 3 less the sum of items 4 and 5)	$ 1200000	00
7. Amount paid with this declaration. (Read carefully Instruction 5)	$ 300000	00

Received
IVO 49
Mar 6 1947
Collector of
Internal Revenue
First Dist. N.Y.

I declare under the penalties of perjury that this declaration has been examined by me and to the best of my knowledge and belief is true, correct, and complete declaration.

SGD H. H. KLEIN
(Signature of taxpayer or agent)

Dated March 4, 1947, 194..

(If this is a joint declaration (not made by agent), it must be signed by both husband and wife)

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EYMAN H. KLEIN-1947

The collector has levied on all of the taxpayer's funds and for that reason he is unable to pay the balance due as shown by this tax return.

File this return with Collector of Internal Revenue on or before March 15, 1948. Any balance of tax due (item 9, below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1947

1947

or fiscal year beginning ....., 1947, and ending ....., 1948

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than $5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces
File Code
Serial 3 202777
District
(Cashier's Stamp)

RECEIVED
MAY 17 1948
COLLECTOR
INTERNAL REVENUE
THIRD PAGE

Name HYMAN H. KLEIN
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS 122 EAST 42 STREET
(PLEASE PRINT. Street and number or rural route)

NEW YORK 17 (City or town, postal zone number) NEW YORK (County) N. Y. (State)

Occupation Executive Social Security No. 217-05-8716

Your Exemptions

List your own name.
If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instruction 1) with 1947 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

1.

Name (please print)	Relationship	Name (please print)	Relationship
Your name H. H. Klein	xxxxxxxxx		
Patricia Klein	Daughter		

Your Income

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1947, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see instruction 2.

2.

Print Employer's Name	Where Employed (City and State)	Amount
H. Harvey Co. Ltd.	Baltimore, Maryland	$ 20,058 85

Enter total here → $ 20,058 85

3. Enter here the total amount of your dividends 41,207 44
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation) 3,805 93
5. If you received any other income, give details on page 2 and enter the total here 2,372,079 47
6. Add amounts in items 2, 3, 4, and 5, and enter the total here ..... $ 2,437,151 69

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of $500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

7. Enter your tax from table on page 4, or from line 12, page 3 ..... $ 1,211,602 76
8. How much have you paid on your 1947 income tax?
   (A) By withholding from your wages ..... $ 3,449 78
   (B) By payments on 1947 Declaration of Estimated Tax 1,200,000 00
   Enter total here → 1,203,449 78
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here ..... $ 8,152 98
10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here ..... $
    Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1948 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1946

To which Collector's office was it sent? Baltimore, Maryland

To which Collector's office did you pay amount claimed in item 8 (B), above? Third, New York

Is your wife (or husband) making a separate return for 1947? Yes ("Yes" or "No")
If "Yes," write below:
Name of wife (or husband) Gertrude Klein

Collector's office to which sent Baltimore, Maryland

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. and in accordance with advice and instructions from counsel.

[signature] 5/17/48 [signature] 5/17/48
(Signature of person (other than taxpayer or agent) preparing return) (Date) (Signature of taxpayer) (Date)

Haas Oblesinger Mayer
(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

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Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Cost of annuity (total amount you paid in)	$	4. Total amount received this year	$
2. Amount received tax-free in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of your cost (line 1 less line 2)	$	6. Enter line 5, or 3 percent of line 1, whichever is greater (Attach separate schedule for each additional annuity or pension)	$

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Kind of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain in Schedule F)	4. Repairs (explain in Schedule G)	5. Other expenses (Itemize in Schedule G)
	$	$	$	$
Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$	$	$	$

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Farmers should obtain Form 1040F)

State (1) nature of business ; (2) business name

(3) business address

Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.

1. Total receipts $

COST OF GOODS SOLD

(To be used where inventories are an income-determining factor)
(Enter the letters "C" or "C or M" on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)

2. Inventory at beginning of year	$	
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (explain in Schedule G)		
7. Total of lines 2 to 6	$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 less line 8)	$	
10. Gross profit (line 1 less line 9)	$	

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not in line 4	$
12. Interest on business indebtedness	
13. Taxes on business and business property	
14. Losses (explain in Schedule G)	
15. Bad debts arising from sales or services	
16. Depreciation, obsolescence and depletion (explain in Schedule F)	
17. Rent, repairs, and other expenses (explain in Schedule G)	
18. Amortization of emergency facilities (attach statement)	
19. Net operating loss deduction (attach statement)	
20. Total of lines 11 to 19	$
21. Total of lines 9 and 20	$
22. Net profit (or loss) (line 1 less line 21)	

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)	2,312,279 47
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc. Amount,	$
2. Name and address of estate or trust Amount,	
3. Other sources (state nature) Amount,	
Total	

Total income from above sources (Enter as item 5, page 1) 2,312,279 47

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
		$			$

[redacted]

On or about March 1947, Tivoli Trading Company, S. A., a Panamanian Corporation, transferred all its assets to Hannes & Co., S. A., another Panamanian corporation, in exchange for all of its issued stock. The charter and corporate powers of Hannes & Co., S. A. and the terms of its common stock are the same in all material respects with the charter, corporate powers and common stock of Tivoli Trading Company, S. A.

At the time that the stock of Hannes & Co., S. A. was received in exchange for stock of Tivoli Trading Company, S. A., the assets of Hannes & Co., S. A. were subject to contingent liabilities not then determinable. These obligations were assumed by Hannes & Co., S. A. Subsequently, in or about May 1947, the assets of Hannes & Co., S. A. were blocked by the Canadian Government pending determination whether any Canadian citizen or corporation had any interest therein. The assets had not been released at the close of the taxableyear and have not yet been released as of this date.

It is expected that the questions raised by the Canadian Government will be finally determined before the close of 1948 and it will be possible at that time to determine the amount and to liquidate and discharge the liabilities of Hannes & Co., S. A. When that has been done, it is the intention of the taxpayer to liquidate Hannes & Co., S. A., at which time the taxpayer's gain, if any, will be returned for taxation.

(3)

Form 1118
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT IN SUPPORT OF CREDIT CLAIMED BY INDIVIDUAL FOR TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR A POSSESSION OF THE UNITED STATES

TO BE FILED BY AN INDIVIDUAL, PARTNERSHIP, OR FIDUCIARY

For Calendar Year 194

Or fiscal year beginning ..... **, 194 , and ending** ..... **, 194**

Name HYMAN HARVEY KLEIN

Address 122 EAST 42 STREET (Street and number), NEW YORK 17 (City or town), N. Y. (State)

TO BE FILLED IN IF CLAIMANT IS AN INDIVIDUAL

Claim for credit is made by the taxpayer named above, who is a citizen or subject of The United States of America (Name of country) and is a resident of The United States of America (Name of country), based on income Received (Received or accrued) for the taxable year begun January 1, 1947, and ended December 31, 1947, for taxes Paid (Paid or accrued), as follows:

I. Total net income from all sources (computed without deductions for any income, war-profits, and excess-profits taxes paid or accrued to foreign countries or possessions of the United States) ..... $ 2,437,151.69

II. Total United States income tax (before credit for foreign taxes) ..... $ 1,217,847.59

SCHEDULE A—Tax Paid or Accrued to a Possession of the United States [3 and 9]

Name of possession of U. S. ..... Character of tax ..... (Income, war-profits, or excess-profits)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified)

Date of accrual ..... (To be given even if claim is based on payment) Date of payment (if paid) ..... (To be given even if claim is based on accrual)

1. Amount of tax [3] (evidenced by attached receipt or return) ..... [4], which (converted at an exchange rate of .....[5]) equals in dollars ..... $.....

2. Income from sources in this possession ..... [4] which (converted at an exchange rate of .....[5]) equals in dollars (reported on Form 1040, as Item .....) ..... $.....

SCHEDULE B—Tax Paid or Accrued to a Foreign Country [3 and 9]

Name of foreign country Dominion of Canada Character of tax Income (Income, war-profits, or excess-profits)

Statute imposing tax Income War Tax Act (To be named fully and clearly so as to be easily identified)

Date of accrual ..... (To be given even if claim is based on payment) Date of payment (if paid) ..... (To be given even if claim is based on accrual)

1. Amount of tax [3] (evidenced by attached receipt or return) ..... [4], which (converted at an exchange rate of .....[5]) equals in dollars ..... $ 6,244.83

2. Income from sources in this foreign country ..... [4] which (converted at an exchange rate of .....[5]) equals in dollars (reported on Form 1040, as Item .....) ..... $ 41,431.63

SCHEDULE C—Tax Paid or Accrued With Respect to Taxpayer's Income Withheld Under a Law of a Foreign Country [9] or a Possession of the United States [9]

Name of foreign country or possession of U. S. ..... Character of tax ..... (Income, war-profits, or excess-profits)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified)

Name of withholding agent ..... Date of withholding .....

1. Amount of tax withheld (evidenced by attached receipts or statement from withholding agent) .....[4], which (converted at an exchange rate of .....[5]) equals in dollars ..... $.....

2. Income from sources in above-named country or possession, which is not included in any other schedule on this form .....[4], which (converted at an exchange rate of .....[5]) equals in dollars (reported on Form 1040, as Item .....) ..... $.....

(See footnotes on page 2)

SCHEDULE G [1]—Separate Summary [2] of Income Received From and Taxes Paid to Each Foreign Country or Possession of United States as Shown in Schedules A to E on Pages 1 and 2

Name of foreign country or possession of United States Dominion of Canada

	Column A Income or loss		Column B Taxes paid or accrued [3]
Schedule A, Item 2	$	Schedule A, Item 1	$
Schedule B, Item 2	41,431.63	Schedule B, Item 1	6,244.83
Schedule C, Item 2		Schedule C, Item 1	
Schedule D, Item 2		Schedule E, Item 2	
Schedule E, Item 4		Total (enter as Item II below)	$ 6,244.83
Total (enter as Item I below)	$ 41,431.63		

I. Total net income from sources within this foreign country or possession of United States (computed without deductions for any income and profits taxes imposed by any foreign country or possession of United States)	$ 41,431.63
II. Total tax paid or accrued to this foreign country or possession of United States	$ 6,244.83
III. Total net income from all sources (same as Item I, page 1)	$ 2,437,151.69
IV. Ratio of income from sources within this foreign country or possession of United States to total income from all sources (Item I divided by Item III)	01.700%
V. Total United States income tax on Item III (same as Item II, page 1)	$ 1,217,847.59
VI. Amount of tax which may be claimed as a credit under the limitation of Section 131 (b) (1) (Item V multiplied by Item IV, or Item II, whichever amount is the smaller)	$ 6,244.83

COMBINED SUMMARY [2] OF INCOME RECEIVED FROM AND CREDITS FOR TAXES PAID TO ALL FOREIGN COUNTRIES OR POSSESSIONS OF UNITED STATES AS SHOWN IN SCHEDULE G, ITEMS I AND VI, RESPECTIVELY

FOREIGN COUNTRY OR POSSESSION OF UNITED STATES	INCOME OR LOSS (Item I, Schedule G)	CREDIT FOR TAXES (Item VI, Schedule G)
Dominion of Canada	$ 41,431.63	$ 6,244.83
Totals (enter as Items I and II below)	$ 41,431.63	$ 6,244.83

I. Net income from sources without United States	$ 41,431.63
II. Sum of credits for taxes paid or accrued to foreign countries or possessions of United States computed separately under limitation of Section 131 (b) (1)	6,244.83
III. Total net income from all sources (computed without deduction for any income and profits taxes paid or accrued to foreign countries or possessions of United States) (same as Item III, Schedule G)	$ 2,437,151.69
IV. Ratio of income from sources without United States to total income from all sources (Item I divided by Item III)	1.700%
V. Total United States income tax on Item III (same as Item V, Schedule G)	$ 1,217,847.59
VI. Amount of tax which may be claimed as a credit under the limitation of Section 131 (b) (2) (Item V multiplied by Item IV, or Item II, whichever amount is the smaller)	$ 6,244.83

(See footnotes on page 2)

Government Exhibit 356

3 4

Vancouver, B.C.,
February 22nd, 1947.

To the Shareholders,
UNITED DISTILLERS OF CANADA LIMITED

Enclosed please find cheque for Dividend No. 8 being at the rate of Fifty Cents per share payable February 22nd, 1947, to shareholders of record February 10th, 1947.

A deduction of 15% on dividends to non-residents of Canada has been withheld to comply with the Dominion Income War Tax Act.

By by-law of the Directors (to be confirmed at the next annual meeting) the financial year end of the company has been changed from September 30th to December 31st and the annual meeting will therefore be held in the month of April, 1947.

Notice of the annual meeting together with financial statements at December 31st, 1946, and proxy forms will be mailed to the shareholders in due course.

To insure prompt receipt of cheques kindly notify us immediately of any change of address, using the form on the back hereof, and stating at the same time your former address.

N. H. PETERS,
Secretary.

SCHEDULE D—Income (or Loss) from Sources Within a Foreign Country or a Possession of the United States on Which No Income or Profits Taxes Were Imposed [6]

1. Name of country: .....

2. Amount of income (or loss) ..... [4], which (converted at an exchange rate (In foreign money)
of ..... [5]) equals in dollars (reported on Form 1040, as Item .....) ..... $.....

SCHEDULE E—Tax Paid or Accrued to a Foreign Country or a Possession of the United States by a Partnership, Estate, or Trust, in Which Claimant Has an Interest [6]

Partnership, estate, or trust ..... (Name) (Address)

Fiduciary (if estate or trust) ..... (Name) (Address)

Character and extent of claimant's interest in partnership, estate, or trust .....

.....

Name of foreign country or possession of U. S. ..... Character of tax ..... (Income, war-profits, or excess-profits)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified)

Date of accrual ..... (To be given even if claim is based on payment) Date of payment (if paid) ..... (To be given even if claim is based on accrual)

1. Total tax paid by partnership or fiduciary ..... (In foreign money) [4], which (converted at an exchange rate of .....[5]) equals in dollars ..... $.....

2. Claimant's share of such tax as reported on partnership or fiduciary return ....

3. Total net income derived from partnership or fiduciary (reported on Form 1040, as Item .....) ....

4. That portion of such income which was derived from sources within this foreign country or possession of United States .....

TO BE FILLED IN BY A PARTNERSHIP OR FIDUCIARY

SCHEDULE F—Tax Paid or Accrued to a Foreign Country or a Possession of the United States by a Partnership, Estate, or Trust [6]

Partnership, estate, or trust ..... (Name) (Address)

Fiduciary (if estate or trust) ..... (Name) (Address)

The attached ..... (Partnership or fiduciary) return is based on income ..... (Received or accrued) during the taxable year begun ....., 19....., and ended ....., 19.....

Name of foreign country or possession of U. S. ..... Character of tax ..... (Income, war-profits, or excess-profits)

Statute imposing tax ..... (To be named fully and clearly so as to be easily identified)

Date of accrual ..... (Both date of accrual and date of payment (if paid) must be given) Date of payment (if paid) ..... (Both date of accrual and date of payment (if paid) must be given)

1. Total amount of this tax payment or accrual (evidenced by attached receipt or return) ..... [4], (In foreign money)
which (converted at an exchange rate of .....[5]) equals in dollars ..... $.....

2. Total net income reported on partnership or fiduciary return ....

3. That portion of such income which was derived from sources within this foreign country or possession of United States .....

FOOTNOTES

[1] If income return is based on income "accrued," or you elect under Section 131 (d) to claim credit for taxes accrued, write "accrued" in the space provided. (See Section 131 (d) and instructions on page 4.)

[2] To secure credit for taxes paid or accrued to possessions of the United States, claimant must be a citizen other than a citizen entitled to benefits of Section 251, or a resident of the United States.

[3] "Amount of tax" means tax proper, *excluding* any amount that represents interest or penalties. If the tax has been actually paid in full, the amount of the tax (excluding interest and penalties) so paid is the amount to be entered in this blank, even though the claim be based on the accrual of the tax.

[4] State this amount in the currency of the foreign country or possession of the United States (e. g., pounds, francs, marks).

[5] Give the rate of exchange used and attach a statement describing in reasonable detail why and how this particular rate was determined.

[6] To secure credit for taxes paid or accrued to a foreign country, claimant must be a citizen other than a citizen entitled to benefits of Section 251, or a resident of the United States. Moreover, if he is an *alien* resident, he must be a citizen or subject of a foreign country which allows "a similar credit to citizens of the United States residing in such country." (See Section 131 (a) on page 4.)

[7] Where there is more than one possession of the United States or one foreign country to which taxes are paid by claimant individually, or by partnership, estate, or trust in which claimant has an interest, additional Schedules A to G, inclusive, should be attached, and the amount of the credit shown on each Schedule A to F, inclusive, should be included in each separate Summary G.

[8] The sum of amounts shown in Item VI of Schedule G from various foreign countries or possessions of United States is subject to the limitation of Section 131 (b) (2) as computed in Combined Summary.

[9] In case there is not loss from sources within a foreign country or possession of United States, report it in this schedule.

AFFIDAVIT

I swear (or affirm) that the foregoing is to the best of my knowledge and belief a true and complete statement of facts relating to the credit for tax as provided in section 131 of the Internal Revenue Code.

.....

(If statement is made by agent, the reason therefor must be stated on this line)

Subscribed and sworn to before me this

..... day of ....., 194...

.....

(Signature of claimant or agent)

.....

(Signature of officer administering oath)

.....

(Address of agent)

.....

(Official capacity)

.....

EXTRACTS FROM SECTION 131 OF THE INTERNAL REVENUE CODE

TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES

SEC. 131. **(a) Allowance of Credit.**—If the taxpayer chooses to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102, shall be credited with:

(1) **Citizens and Domestic Corporations.**—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) **Resident of United States.**—In the case of a resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) **Alien Resident of United States.**—In the case of an alien resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) **Partnerships and Estates.**—In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be.

Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter.

(b) Limit on Credit.—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed, in the case of a taxpayer other than a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year, or in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources within such country bears to its entire normal-tax net income for the same taxable year; and

(2) The total amount of the credit shall not exceed, in the case of a taxpayer other than a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year, or, in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources without the United States bears to its entire normal-tax net income for the same taxable year;

* * * * * * *

(c) Adjustments on Payment of Accrued Taxes.—If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 322. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(d) Year in Which Credit Taken.—The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(e) Proof of Credits.—The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in section 119, (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, such amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

* * * * * * *

(h) Credit for Taxes in Lieu of Income, Etc., Taxes.—For the purposes of this section and section 23 (c) (1), the term "income, war-profits, and excess-profits taxes" shall include a tax paid in lieu of a tax upon income, war-profits, or excess-profits otherwise generally imposed by any foreign country or by any possession of the United States.

INSTRUCTIONS

WHEN CREDIT FOR TAXES MAY BE TAKEN.—The credit for taxes provided by section 131 (a) may ordinarily be taken either in the return for the year in which the taxes accrued or in which the taxes were paid, dependent upon whether the accounts of the taxpayer are kept and his returns filed upon the accrual basis or upon the cash receipts and disbursements basis. Where a taxpayer keeps his books of account on the accrual basis, a credit for taxes paid to a foreign country must also be taken on that basis and the time of payment of the taxes has in such case nothing to do with the time of credit. A taxpayer whose books of account are kept on the cash receipts and disbursements basis has the privilege of taking the credit for foreign taxes on an accrual basis, but if he elects to do so, the credit for foreign taxes with respect to all subsequent years must be taken upon the same basis.

16—41738-1 U. S. GOVERNMENT PRINTING OFFICE

[redacted]

1947 INCOME TAX RETURN

LONG TERM CAPITAL GAINS & LOSSES

	Name	date Acquired	Date Sold	Gross Sales Price	Cost	Profit or Loss
15,000	Waldorf & Co. Ltd.	1/30/45	1/20/47	$ 960,663.26	$ 100.00	$ 960,563.26
15,000	The Seaboard Syndicate	January & April 1945	1/20/47	2,771,590.69	700.00	2,770,890.69
4	Regan Potter & Co. Ltd.	4/11/45	1/20/47	978,132.90	100.00	978,032.90
5	Distillors Seagram	1/21/43	2/21/47	524.86	421.02	103.84
450	Cambridge Distr. Ltd.	6/ 7/46	12/30/47	19,125.00	11,250.00	7,875.00
600	Midwest Ref.	5/11-18/ 1945	12/11/47	1,376.37	2,148.59	772.22
5	Crucible Steel	3/27/43	12/ 8/47	338.22	392.90	54.68
100	Kirby & Kirby Ltd.	10/ 8/45	1/30/47	28,520.15	1,000.00	27,520.15
				$4,760,271.45	$16,112.51	$4,744,158.94

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HYMAN H. KLEIN

1947 INCOME TAX RETURN

CHARITABLE CONTRIBUTIONS

Baltimore Hebrew Congregation	$ 53.50
Community Fund	100.00
Park School	100.00
Anshe Emorah Congregation	105.00
Jewish Welfare Fund	500.00
Shearith Isreal Congregation	26.00
Congregation Schora Tzedech	2,000.00
Miscellaneous	500.00
Total	$3,384.50

Schedule D (Form 1040)

SCHEDULE OF GAINS AND LOSSES
FROM SALES OR EXCHANGES OF (1) CAPITAL ASSETS AND (2) PROPERTY OTHER THAN CAPITAL ASSETS

(TO BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE WITH FORM 1040)

For Calendar Year 1947

Or fiscal year beginning ....., 1947, and ending ....., 1948

(See Instructions on other side)

Name of taxpayer HYMAN H. KLEIN

Address 122 EAST 42 STREET, NEW YORK 17, N. Y.

(1) CAPITAL ASSETS

1. Kind of property (if necessary, attach statement of descriptive details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	8. Gain or loss (column 4 plus column 7 less the sum of columns 5 and 6)	9. [illegible]	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS									
			$	$	$	$	$	100	$
								100	
								100	
								100	
Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)									$
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS									
			$	$	$	$	$	50	$
								50	
		SCHEDULE	ATTACHED				4,744,1[illegible]	50	[illegible]
								50	
Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)									$[illegible]

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Capital loss carry-over (attach statement)	3. Net gain or loss to be taken into account from column 10, above (a) Gain	(b) Loss	4. Net gain or loss to be taken into account from partnerships and common trust funds (a) Gain	(b) Loss	5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary (a) Gain	(b) Loss
1. Total net short-term capital gain or loss	$	$	$	$	$	$	$
2. Total net long-term capital gain or loss		$	$	$	$	$	$
3. Net gain in column 5, lines 1 and 2. (Enter on line 1, Schedule D, page 2, Form 1040)						$	xxxxxx
4. Net loss in column 5, lines 1 and 2. (The amount to be entered on line 1, Schedule D, page 2, Form 1040, is (1) this item or (2) net income, or adjusted gross income if tax is computed by use of the tax table on page 4, Form 1040, computed without regard to capital gains or losses, or (3) $1,000, whichever is smallest).						xxxxxx	$

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term *capital gain* over net short-term *capital loss*, and line 5, page 3, Form 1040, exceeds $18,000

1. Net income (line 3, page 3, Form 1040)	2431962	07	6. Combined tentative normal tax and surtax on amount on line 5. (See Tax Computation Instructions on page 4 of Form 1040 Instructions)	$ 33461 95
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 5 (a), less line 1, column 5 (b), of summary above)	2372079	47	7. Less: 5 percent of line 6	1674 1[illegible]
			8. Partial tax (line 6 less line 7)	$ 31807 8[illegible]
3. Ordinary net income (line 1 less line 2)	$ 59882	60	9. 50 percent of line 2	118603[illegible] 74
4. Less: Exemptions (line 4, page 3, Form 1040)	1000	00	10. Alternative tax (line 8 plus line 9)	1217847 [illegible]
			11. Total normal tax and surtax (line 8, page 3, Form 1040)	2075[illegible] 71
5. Balance	$ 58882	60	12. Tax liability (line 10 or line 11, whichever is the lesser). (Enter on line 8, page 3, Form 1040)	1217847 [illegible]

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	7. Gain or loss (column 3 plus column 6 less the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter on line 2, Schedule D, page 2, Form 1040)						$

If any item in this schedule was acquired by you otherwise than by purchase, attach a statement explaining how acquired.

his or her return on Form 1040, and must also itemize deductions.

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

			Amount
Contributions	Attached Schedule	$ 3,384 50	
	Allowable Contributions (not in excess of 15 percent of item 6, page 1)		$ 3,384 50
Interest		$	
	Total Interest		
Taxes	Real Estate	$ 384 09	
	Maryland Income Tax	1,171 03	
	Miscellaneous	250 00	
	Total Taxes		1,805 12
Losses from fire, storm, shipwreck, or other casualty, or theft.		$	
	Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses		$	
	Net Expenses (not compensated by insurance or otherwise)	$	
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses		
	Allowable Medical and Dental Expenses. See Instruction for limitation		
Miscellaneous (See Instructions)		$	
	Total Miscellaneous Deductions		
	TOTAL DEDUCTIONS		$ 5,189 62

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income		8,437,151 69
2. Enter DEDUCTIONS (if deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $500)		5,189 62
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income		8,431,962 07
4. Enter your exemptions ($500 for each person whose name is listed in item 1, page 1)		1,000 00
5. Subtract line 4 from line 3. Enter the difference here		8,430,962 07
6. Use the tax rates in instruction sheet to figure your combined tentative normal tax and surtax on amount entered on line 5. Enter the tentative tax here. (If line 3, above, includes partially tax-exempt interest, see Tax Computation Instructions)		8,186,995 48
7. Enter here 5 percent of amount entered on line 6, above		109,349 77
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax computation is made on separate Schedule D, enter here tax from line 12 of Schedule D)		8,077,645 71
		8,217,847 59

IF YOU USED THE 10% STANDARD DEDUCTION IN LINE 2, DISREGARD LINES 9, 10, AND 11, AND COPY ON LINE 12 THE SAME FIGURE YOU ENTERED ON LINE 8.

9. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116)	$ 6,244 83	
10. Enter here any income tax paid at source on tax-free covenant bond interest		6,244 83
11. Add the figures on lines 9 and 10 and enter the total here		8,211,602 76
12. Subtract line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax		

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HAAS, SCHLESINGER & MAYERS
CERTIFIED PUBLIC ACCOUNTANTS
122 EAST 42ND STREET, NEW YORK 17, N. Y.
MURRAY HILL 5-8690

February 27, 1945

Agencias Distiladores, S. A.
411 Aguiar Street
Havana, Cuba

Dear Sirs:

With further reference to the memorandum of agreement entered into between you and R. C. Williams & Co., Inc., dated April 18, 1944, I have been requested to give an opinion as to the tax effect of your method of carrying out your end of the agreement in the United States. I have been informed that R. C. Williams & Co., Inc. orders merchandise direct from Duncan Harwood & Co., Ltd. in Vancouver, Canada; that when the merchandise so ordered is delivered to the freight yard in Vancouver, the Canadian corporation presents a bill addressed to you and sends it together with the consulate invoice and railroad bill of lading to your president who maintains an office in this country. He presents the two latter papers together with an invoice and a sight draft for the amount of the sale to the bank, collects the amount thereof for your account, deposits these collections in an account in this country to your credit and uses the funds to pay the Canadian corporation, allowing the balance to remain on deposit here. I have been asked to give an opinion as to whether or not this procedure will result in making you liable for United States income tax.

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In this connection we must begin where I left off in my opinion of April 17, 1944. According to the terms of your contract and as described more fully in said opinion, it was my opinion that you would be considered a non-resident foreign corporation not doing business within the United States and therefore not subject to tax on your profits from the sale of whiskey here. The problem involved is whether the activities of your president have so modified the facts as to result in a finding that you are doing business here. I have made a thorough examination of all the decisions of the Tax Court and the federal courts up to and including the United States Supreme Court and find no case directly in point. However, I have gathered from various sections of the law and various decisions of the courts the following:

> Regulation 64 Section 137.51 provides that "the determination as to whether a foreign corporation is carrying on or doing business in the United States within the meaning of the code depends upon the particular facts of each case", and it is further provided that recourse may be had to an examination of the capital stock tax regulations in order to determine whether a foreign corporation is liable for income tax as well. Regulation 64, Section 137.31, covering the capital stock tax, provides "the term business is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of those activities, any corporation organized for profit and carrying out any of the purposes of its organization, is doing business within the meaning of the code."

Referring to the cases for a definition of the phrase "carrying out any of the purposes of its organization", we

find the following: In the case of McCoach vs. Mine Hill and Schylkill Haven Railroad Company, 228 U. S. 295, the taxpayer's activities consisted of holding stockholders meetings, election of officers, maintenance of offices and clerical force, collection of rentals and other income, investment of funds and payment of taxes, yet it was held that the corporation was not doing business, since it had leased all of its properties to others and was merely using its funds for investment purposes, which was not carrying on the business for which it was organized. In the case of Lewellyn vs. Pittsburgh B. & L. E. R. Company, 222 Federal 177, the court discusses the question of doing business and it decided that the primary purposes for which the company was incorporated was the transportation of persons and property. When it was doing that it was conducting business; everything it did leading up to that activity was not doing business and it might be inferred that anything done after that point also was not doing business. In an opinion rendered in 1933, counsel for the Treasury Department stated that mere investments in the United States by a foreign corporation did not constitute carrying on or doing business in the United States, and it has been held that the mere receipt of income from property did not constitute engaging in business (McCoach Supra).

I might go on to cite other federal cases in which a fine distinction is made as to what activities constitute doing business or carrying out the corporate purposes and what activities are excluded from that definition. In all the opinions of the Supreme Court which I have read I find this general rule has evolved: that any activity beyond the mere receipt of income from property and the payment of administration expenses incidental to the receipt and distribution thereof, constitute carrying on or doing business. In apply-

ing this principle to your case, it is obvious that your purpose for existence is the sale of whiskey; that once the whiskey is sold you have accomplished that purpose. Anything which may be done thereafter which is not in furtherance of that purpose, would not constitute a part of your essential activities. Since, in my opinion of April 17, 1944, I concluded that your income was derived in Canada, it would appear that once the Canadian corporation has made delivery to the freight yard, your profit making activities have ended. The incidental activity which is required thereafter to collect the proceeds of the sale and disburse them, in and of themselves would not constitute the doing of business. The entire corporate purpose, to wit: the order, the delivery, and the payment represent together those processes which you perform in carrying out the purpose of your charter. Divorcing therefrom the final step, i. e. the receipt of the income, which, while to you is rather important is merely incidental in the eyes of the law, could not constitute the carrying out of the purpose of your corporation. It is my opinion, therefore, that if the sole activity of your president in this country, is the presentation of papers to a bank for the purpose of collecting your income and the payment out of those collections of expenses and the cost of merchandise, then you are not doing business in the United States and are not subject to tax in this country.

Let me caution you for the second time that the Treasury Department is not fully in accord with these principles and you may be required to resort to the courts to sustain them. Let me state further as a practical matter that if instead of just performing the functions I described above, your president is in fact doing your business here, such as supervising the carrying out of your agreement with Williams, supervising the shipment of the merchandise from Harwood to

Government Exhibit 358

Williams, and caring for the multitude of details which must be involved in these transactions, then you are doing business here and subject to tax here. My opinion is based solely on the facts which have been given me and which I have outlined above.

Very truly yours

MAURICE A. HAAS

h:j

HENRY G BURKE
ATTORNEY AT LAW
015-1018 MUNSEY BUILDING
BALTIMORE 2

March 6, 1945

Agencias Destiladoras, S. A.
411 Aguiar Street
Havana, Cuba

Dear Sirs:

As requested by you, I am submitting below my opinion with respect to the status of the Agencias Destiladoras, S. A., 411 Aguiar Street, Havana, Cuba, under the income tax laws of the United States.

Agencias Destiladoras, S. A., according to the information submitted, is a corporation organized under the laws of the Republic of Cuba. For the purposes of the Internal Revenue Code of the United States, it is classified as a foreign corporation. A foreign corporation is one "which is not domestic", and a domestic corporation in turn is a corporation "created or organized in the United States or under the laws of the United States, or any State or Territory". This definition is found in Section 3.797 of the Internal Revenue Code. Since your company was not organized under the laws of the United States or any State or Territory, it should be classified as foreign.

With respect to foreign corporations, a further division is made between resident and non-resident corporations. Resident corporations are those considered as "engaged in trade or business within the United States". Non-resident corporations are those "not engaged in trade or business within the United States", but who are, nevertheless, taxable on income "from sources within the United States". The question

whether your company derives income from sources within the United States and whether it is a resident or non-resident corporation will depend upon the same facts. If there is no taxable income derived from sources within the United States, we may safely conclude that the company is not engaged in any trade or business within the United States. Only if there is taxable income, need we face the other problem as to whether the company is resident or non-resident. The disposition of the income question in the negative will, therefore, dispose of the question of residence.

At present the income of your company is earned principally in connection with sales made under the terms of the Memorandum of Agreement of April 18, 1944, entered into by your company and R. C. Williams & Company, Inc., a corporation duly organized under the laws of the State of New York, U. S. A. The question is presented whether or not under the terms of this agreement the profits resulting from the sales constitute income from sources within the United States.

The Agreement states that your company is the exclusive agent of Duncan Harwood & Co. Ltd. of Vancouver, Canada, for the sale and distribution of "Harwood's", and that R. C. Williams & Company, Inc. are appointed as your exclusive distributing agent for the sale of the brand "Harwood's" in the United States. The Memorandum of Agreement further establishes the method of determining prices and of handling the merchandise. In addition to other provisions relating to the method of distribution and geographical allocations of the merchandise, the Agreement also provides for the mechanics of payment by R. C. Williams & Company, Inc. to your company or its banker. For our purposes, the important provisions are contained in the Seventh, Eighth, and Eleventh paragraphs of the Memorandum of Agreement, which provide as follows:

"SEVENTH: It is understood and agreed that title to all shipments from the SUPPLIER to the AGENT shall pass f.o.b. Vancouver, Canada, and the AGENT assumes all risk of loss after the merchandise is loaded on railroad cars at Vancouver, B. C., and a railroad bill of lading is issued for such shipment.

"EIGHTH: All importations into the United States shall be in the name of the AGENT which shall make all customs entries therefor. The SUPPLIER, at its cost and expense, shall attach a strip or add to the label words as follows:

"'Imported by R. C. WILLIAMS & CO.,INC.
265 Tenth Avenue
New York, N. Y.
Sole Agent for the U. S.'

Where State Laws make it necessary to affix a strip or label showing the name of the licensee in the said state, same shall be affixed by the SUPPLIER at the SUPPLIER'S cost and expense, on the written instructions of the AGENT, such strip or label to contain the name of the wholesale customer of the AGENT in such state. Whenever whiskey is already cased, in such event the customer of the AGENT, pursuant to the laws of the State in which the customer is located, shall affix his own strip or label at his own cost and expense.

"ELEVENTH: Notwithstanding the maximum prices set forth in the order of the Office of Price Administration hereinbefore set forth, the AGENT agrees that it will make sales of "HARWOOD'S" to wholesalers on the following basis:

$20.77, net, per case, f.o.b. Vancouver, Canada in bond, which price is made up of the total of

(a) cost of $19.05
(b) strip stamps of 12¢, and
(c) profit of $1.60

and that all sales to wholesalers will be at a price not to exceed the said price of $20.77 per case; the

wholesaler (when goods are already cased) to affix State Stamps where required, at his own cost and expense.

Sales to monopoly states shall be made on the same basis, except for an increase to cover cash discount and the cost of affixing state seals where necessary and required."

The principal issue presented in the determination of whether or not your company is subject to income tax in the United States on profits made on sales to R. C. Williams & Company, Inc. will depend on whether or not these sales result in income from sources within the United States. Since the contract with R. C. Williams & Company, Inc. is a contract of sale, the profit is considered as "income derived from the purchase and sale of personal property". Such income is "treated as derived entirely from the Country in which sold" (Section 29.119-8 of Regulations 111).

This provision in the Regulations then presents the question as to whether sales made under the terms of the Williams Agreement are, or are not, to be considered as sales made within the United States. The determination of where the sale is made is governed primarily by the laws of sales rather than the income tax laws, but the income tax cases involving questions of this type have accepted the general legal theory that the "place of sale" controls, and the sale is regarded as made at the point where title passes to the buyer. Under the provisions of the Williams Agreement quoted above, title passes to the buyers when the merchandise is consigned to them in Canada. The sale and the resulting income are regarded as derived from outside the United States and, therefore, not subject to income tax of the United States.

A set of facts similar to those present in your operations under the Williams Agreement were presented in the case of the Ronrico Corporation, 44 B. T. A. 1130. This case involved the arrangements under a written

agreement with McKesson and Robbins, Inc. as agent for the distribution of Ronrico rum in the United States. The Board of Tax Appeals, in its opinion, described the character of the transaction and also discussed its legal status. The Board said in part as follows: "the seller shall place the goods to be sold aboard a common carrier, prepay the freight, procure proper insurance on the goods, deliver the bill of lading to the buyer, and collect a lump sum which includes freight and insurance costs which the seller has paid. Under such contracts, title to the goods and the risk involved passed to the buyer at the point of shipment provided the shipper has complied with the requirements set out . . . . . The buyer is obligated thereupon to pay the agreed price when the documents are delivered to him in proper form, even though they shall arrive before the goods" (Page 1134). The Ronrico case was confirmed by the Board of Tax Appeals in the case of The Exolon Company, 45 B. T. A., 844.

The question as to whether other factors such as, the place of contract, the place of delivery, the place of payments, the terms of the agreement, or other extraneous circumstances may have a bearing on the determination of the case have been considered in various cases by the Board of Tax Appeals and the Courts. They appear to be entirely in agreement that the sole issue is the "place of sale" and that the other factors are immaterial.

In the case of Commissioner of Internal Revenue v. East Coast Oil Company, S. A., 85 F. (2nd) 322, the Court held that the mere execution of the contract did not result in profit. The earning of the profit was inseparably bound up with the passing of title to the buyer. Discussing both f.o.b. and c.i.f. contracts, the Court said "it is well settled that under either form of contract title to the goods passes from the seller to the buyer on delivery of the goods to the carrier and delivery to the buyer of the bill of lading and other documents essential to show the sale."

Government Exhibit 371

THE SEABOARD SYNDICATE, S. A.,
REGAN POTTER & CO., LTD, S. A.,
WALDORF & CO., LTD, S. A.

DECEMBER 31, 1946

HAAS, SCHLESINGER & MAYERS
CERTIFIED PUBLIC ACCOUNTANTS

122 East 42nd Street, New York 17, N. Y.
MUrray Hill 5-8690

January 16, 1947

Mr. H. H. Klein
10 Light Street
Baltimore, Maryland

Dear Sir:

In accordance with your request we have prepared the attached report from figures submitted by you and without audit.

Exhibit A:—Compania Continental, S. A. Consolidated Balance Sheet of its Wholly Owned Subsidiaries as at December 31, 1946

Exhibit B:—The Seaboard Syndicate, S. A. Consolidated with its Wholly Owned Subsidiary Compania Continental, S. A. Balance Sheet as at December 31, 1946

Exhibit C:—The Seaboard Syndicate, S. A., Regan Potter & Co., Ltd, S. A., and Waldorf & Co., Ltd, S. A. Combined Balance Sheets as at December 31, 1946

Government Exhibit 371

Exhibit D:—Compania Continental, S. A. Consolidated Statement of Income, Profit & Loss of its Wholly Owned Subsidiaries from the Commencement of Business to December 31, 1946

Exhibit E:—The Seaboard Syndicate, S. A., Regan Potter & Co., Ltd, S. A., and Waldorf & Co., Ltd, S. A. Combined Operating Statements from the Commencement of Business to December 31, 1946

Should you require further information relative to any of the items appearing on this report, we will cheerfully furnish you therewith.

Respectfully submitted,

HAAS, SCHLESINGER & MAYERS
Certified Public Accountants
State of New York

EXHIBIT A

Government Exhibit 371

COMPANIA CONTINENTAL, S. A.

CONSOLIDATED BALANCE SHEET
OF ITS WHOLLY OWNED SUBSIDIARIES
AS AT DECEMBER 31, 1946

	Cameron Stuart Co. Ltd, S. A.	Exportadora Kent, S. A.	Compania Ramsey Scott Exportadores S. A.	Exportadora De La Costa S. A.	Eliminations	Total
ASSETS						
CASH—ROYAL BANK OF CANADA, HAVANA, CUBA	$	$68,295.42	$ 14,365.10	$	$	$ 82,660.52
CASH—ROYAL BANK OF CANADA, MONTREAL	4,236,849.95		136,120.89	26,193.98		4,399,164.82
ACCOUNTS RECEIVABLE—EXPORTADORA DE LA COSTA, S. A.		750.00			750.00	
ACCOUNTS RECEIVABLE—CAMERON STUART CO. LTD, S. A.				5,004.19	5,004.19	
TOTAL ASSETS	$4,236,849.95	$69,045.42	$150,485.99	$31,198.17	$5,754.19	$4,481,825.34
LIABILITIES & CAPITAL						
ACCOUNTS PAYABLE	$ 5,004.19	$	$	$ 750.00	$5,754.19	$
CAPITAL STOCK—ISSUED AND OUTSTANDING	10,000.00	10,000.00	10,000.00	10,000.00		40,000.00
SURPLUS—DECEMBER 31, 1946 (Exhibit D)	4,221,845.76	59,045.42	140,485.99	20,448.17		4,441,825.34
TOTAL LIABILITIES & CAPITAL	$4,236,849.95	$69,045.42	$150,485.99	$31,198.17	$5,754.19	$4,481,825.34

Government Exhibit 371

EXHIBIT B

THE SEABORD SYNDICATE, S. A.

CONSOLIDATED WITH ITS WHOLLY OWNED SUBSIDIARY

COMPANIA CONTINENTAL, S. A.

BALANCE SHEET AS AT DECEMBER 31, 1946

Assets	Seabord	Continental Subsidiaries	Eliminations	Total
CASH—ROYAL BANK OF CANADA, MONTREAL	$ 378,802.69	$4,399,164.82	$	$ 4,777,967.51
CASH—ROYAL BANK OF CANADA, HAVANA		82,660.52		82,660.52
CANADIAN FUNDS—ROYAL BANK OF CANADA, MONTREAL	44,877.74			44,877.74
CANADIAN BONDS AT COST—PAR VALUE	3,375,000.00			3,375,000.00
ACCRUED INTEREST ON ABOVE (2 MONTHS AT 1¾%)	9,843.75			9,843.75
SECURITIES OWNED 314,227 SHARES U. D. L. COMMON STOCK	2,496,013.23			2,496,013.23
INVESTMENT IN THE MALECON CO., LTD.	300,000.00			300,000.00
INVESTMENT IN CONTINENTAL	40,000.00		40,000.00	
TOTAL ASSETS	$6,644,537.41	$4,481,825.34	$40,000.00	$11,086,362.75
CAPITAL STOCK	$6,419,607.38	$ 40,000.00	$40,000.00	$ 6,419,607.38
SURPLUS—DECEMBER 31, 1946 (Exhibit E)	224,930.03	4,441,825.34		4,666,755.37
TOTAL CAPITAL	$6,644,537.41	$4,481,825.34	$40,000.00	$11,086,362.75

Government Exhibit 371

EXHIBIT C

THE SEABORD SYNDICATE, S. A.
REGAN POTTER & CO., LTD, S. A.
AND WALDORF & CO., LTD, S. A.

COMBINED BALANCE SHEETS AS AT DECEMBER 31, 1946

Assets	Seabord	Regan Potter	Waldorf	Total
CASH—ROYAL BANK OF CANADA, MONTREAL	$ 4,777,967.51	$1,080,086.02	$ 991,023.27	$ 6,849,076.80
CASH—ROYAL BANK OF CANADA, HAVANA	82,660.52			82,660.52
CANADIAN FUNDS—ROYAL BANK OF CANADA, MONTREAL	44,877.74	27,625.17	19,848.50	92,351.41
CANADIAN BONDS AT COST—PAR VALUE	3,375,000.00	2,647,000.00	2,325,000.00	8,347,000.00
ACCRUED INTEREST ON ABOVE (2 MONTHS AT 1¾%)	9,843.75	7,720.42	6,781.25	24,345.42
SECURITIES OWNED 314,227 SHARES U. D. L. COMMON STOCK	2,496,013.23			2,496,013.23
ACCOUNTS RECEIVABLE		1,500,000.00		1,500,000.00
DUE FROM SUBSCRIBERS		100.00		100.00
INVESTMENT IN THE SIERRA CO., LTD.			500,000.00	500,000.00
INVESTMENT IN THE MALECON CO., LTD.	300,000.00			300,000.00
IVESTMENT IN THE CASCADE SECURITIES CO., LTD.		150,000.00		150,000.00
TOTAL ASSETS	$11,086,362.75	$5,412,531.61	$3,842,653.02	$20,341,547.38
CAPITAL STOCK	$ 6,419,607.38	$ 400.00	$2,985,660.86	$ 9,405,668.24
SURPLUS—DECEMBER 31, 1946 (Exhibit E)	4,666,755.37	5,412,131.61	856,992.16	10,935,879.14
TOTAL CAPITAL	$11,086,362.75	$5,412,531.61	$3,842,653.02	$20,341,547.38

Government Exhibit 371

EXHIBIT D

COMPANIA CONTINENTAL, S. A.

CONSOLIDATED STATEMENT OF INCOME, PROFIT & LOSS OF ITS WHOLLY OWNED SUBSIDIARIES

FROM THE COMMENCEMENT OF BUSINESS TO DECEMBER 31, 1946

	Cameron Stuart Co. Ltd, S. A.	Exportadora Kent, S. A.	Compania Ramsey Scott Exportadores S. A.	Exportadora De La Costa S. A.	Totals
ME					
ss Sales	$19,230,270.64	$3,772,991.23	$14,686,334.58	$1,109,807.02	$38,799,403.47
s: Sales Returns and Allowances	95,182.22	36,139.86	23,226.84	92,560.92	247,109.84
Income	19,135,088.42	3,736,851.37	14,663,107.74	1,017,246.10	38,552,293.63
OF SALES					
rchases	9,602,255.20	3,690,711.78	14,458,526.48	1,081,032.38	28,832,525.84
s: Purchase Returns and Allowances	102,580.42	6,375.00		88,807.22	197,762.64
of Sales	9,499,674.78	3,684,336.78	14,458,526.48	992,225.16	28,634,763.20
s PROFIT ON SALES	9,635,413.64	52,514.59	204,581.26	25,020.94	9,917,530.43
NSES					
les Expense	1,797,964.50		40,650.00		1,838,614.50
mmissions.	3,614,522.64				3,614,522.64
gal Expense	1,000.00	3,600.00	2,000.00		6,600.00
scellaneous	80.74	6,501.25	16,695.27	3,822.77	27,100.03
xes		2,250.00	3,000.00	750.00	6,000.00
aveling			1,750.00		1,750.00
Expenses	5,413,567.88	12,351.25	64,095.27	4,572.77	5,494,587.17
PROFIT FOR THE PERIOD	4,221,845.76	40,163.34	140,485.99	20,448.17	4,422,943.26
	(11/7/45–12/31/46)	(1/1/46–12/31/46)	(2/5/46–12/31/46)	(2/4/46–12/31/46)	
PROFIT FOR 1945		18,882.08			18,882.08
LUS—DECEMBER 31, 1946 (Exhibit A)	$ 4,221,845.76	$ 59,045.42	$ 140,485.99	$ 20,448.17	$ 4,441,825.34

Government Exhibit 371

EXHIBIT E

THE SEABORD SYNDICATE, S. A.,
REGAN POTTER & CO., LTD, S. A.
AND WALDORF & CO., LTD, S. A.

COMBINED OPERATING STATEMENTS
FROM THE COMMENCEMENT OF BUSINESS
TO DECEMBER 31, 1946

	Seabord	Regan Potter	Waldorf	Total
INCOME				
Dividends	$ 21,306.70	$	$	$ 21,306.70
Interest	51,603.00	47,211.89	41,617.09	140,431.98
Profit on Purchase of Canadian Funds	177,053.03	233,601.90	125,216.52	535,871.45
Commissions Earned		5,797,040.69	3,504,575.52	9,301,616.21
Income of Subsidiaries (Exhibit D)	4,441,825.34			4,441,825.34
Total Income	4,691,788.07	6,077,854.48	3,671,409.13	14,441,051.68
EXPENSES				
Bank Charges	2,626.51	1,181.85	1,052.02	4,860.38
Taxes	15,820.70		779.20	16,599.90
Legal Fees	4,085.49	444.40	3,122.50	7,652.39
General Expenses	2,500.00			2,500.00
Commissions Paid		664,096.62		664,096.62
Sales Expense			2,809,463.25	2,809,463.25
Total Expenses	25,032.70	665,722.87	2,814,416.97	3,505,172.54
NET INCOME FOR THE PERIOD SURPLUS—DECEMBER 31, 1946 (Exhibits B & C)	$4,666,755.37	$5,412,131.61	$ 856,992.16	$10,935,879.14
	(1/1/46-12/31/46	(4/9/45-12/31/46)	(1/1/46-12/31/46)	

Government Exhibit 378

GOVERNMENT'S
EXHIBIT
U.S. Dist. Court
S.D. of N.Y.
[illegible] 13 [illegible]

378 xx

Cameron Stuart

Certified to be photostatic copy within of the books of account of Cameron Stuart and Company Limited

[signature] (R.W. Thomas)
Intelligence Officer
Department of National Revenue
(Taxation Division) Canada
17 May 1948

Victory
Special Agent
U.S. Treasury Dept.
[illegible]/12/[illegible]

Government Exhibit 378

Date	Paid To	Cash Paid Out	Paid From Account at	Dr. Accounts Payable	Dr. General Ledger	Explanation
24	Waldorf & Co. Ltd. S.A.	562300.00	N.Y. Royal		562300.00	Accrued Royalties Pay
24	Royal Bank of Can.	500000.00	NY "			See Cash Receipts
24	Tivoli Trading Co. S.A.	18725.00	NY "		18725.00	Reserve for Sales Exp.
24	Regan, Potter & Co. Ltd. S.A.	41575.00	NY "		41575.00	" " Sales Expense
24	" " "	120600.00	NY Chase		120600.00	" " Regan Potter
1	Peter Malcolm & Co. Ltd.	42264.13	NY Royal	42264.13		
19	"	138902.10	"	138902.10		
28	Waldorf & Co. Ltd. S.A.	388105.00	"		388105.00	Accrued Roy. Pay.
28	Regan, Potter & Co. Ltd. S.A.	92235.00	NY Chase		92235.00	Res. for Regan Potter
28	Duncan, Harwood & Co. Ltd.	1000000.00	NY Royal	1000000.00		
28	Tivoli Trading Co. S.A.	20355.00	NY Chase		20355.00	Res. for Sales Exp.
28	Regan, Potter & Co. Ltd.	25762.50	NY Chase		25762.50	"
28	Peter Malcolm & Co. Ltd.	332704.08	NY Chase	332704.08		
28	John Dunbar & Co. Ltd.	233047.50	NY Chase	233047.50		
26	Waldorf & Co. Ltd. S.A.	278590.00	NY "		278590.00	[illegible]
26	Regan, Potter & Co. Ltd. S.A.	52655.00	NY Royal		52655.00	Res. for Reg. Potter
26	Tivoli	12580.00	"		12580.00	Res. for Sales Exp.
26	Regan, Potter & Co. Ltd. S.A.	13747.50	"		13747.50	"
26	Peter Malcolm & Co. Ltd.	148081.88	NY Chase	148081.88		
6	"	150000.00	"	150000.00		
6	"	33096.67	NY Royal	33096.67		
13	Self	769850.00	"		769850.00	Notes Receivable
13	"	645325.00	"		645325.00	"
13	"	654996.56	"		654996.56	"
6	Waldorf	100000.00	"		100000.00	Accrued Roy. Pay
6	"	101312.50	NY Chase		101312.50	Accrued Roy. Pay
6	Regan, Potter	56450.00	N.Y. Royal		56450.00	Res. for Reg. Pot.
6	John Dunbar & Co. Ltd.	8050.00	"	8050.00		
6	Tivoli Trading Co. S.A.	14050.00	"		14050.00	Res. for Sales Exp.
6	Regan, Potter	14175.00	NY Chase		14175.00	"
~~20~~	~~Compania Continental, S.A.~~	~~3000000.00~~	~~Mont. Royal~~		~~3000000.00~~	~~Cont.~~
24	Duncan Harwood & Co. Ltd.	296063.32	"	296063.32		for Harwood
27	"	66859.17	NY Chase	66859.17		
27	"	11140.83	NY Royal	11140.83		
30	Waldorf & Co. Ltd. S.A.	196200.00	Montreal Royal		196200.00	Accrued Royalties Pay.
30	Roy Potter & Co. Ltd. S.A.	65400.00	"		65400.00	Res. for Reg. Pot.

Government Exhibit 379

GOVERNMENT'S
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
JUN 13 1955

379 XX

Government Exhibit 379

[illegible], B. C.

May 10, 1948.

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[illegible]
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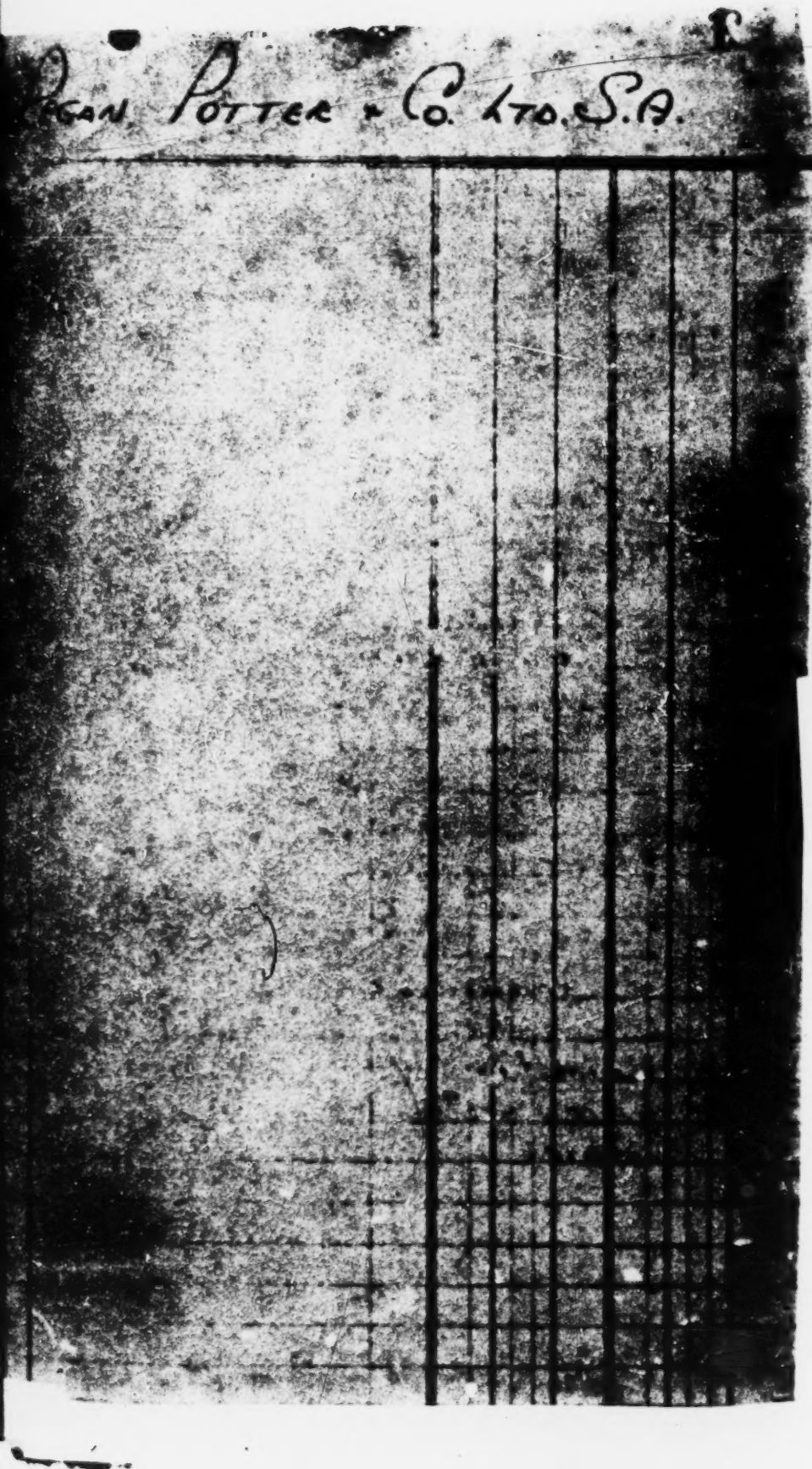
[illegible] to 173 incl.
[illegible], 177
[illegible], 181
[illegible], 185
[illegible] to 193 incl.

[illegible]
[illegible],
Senior Intelligence Officer,
Vancouver District Office,
Dept. of National Revenue ([illegible]

Thomas J. Victory
Thomas J. Victory,
Special Agent,
U. S. Treasury Department.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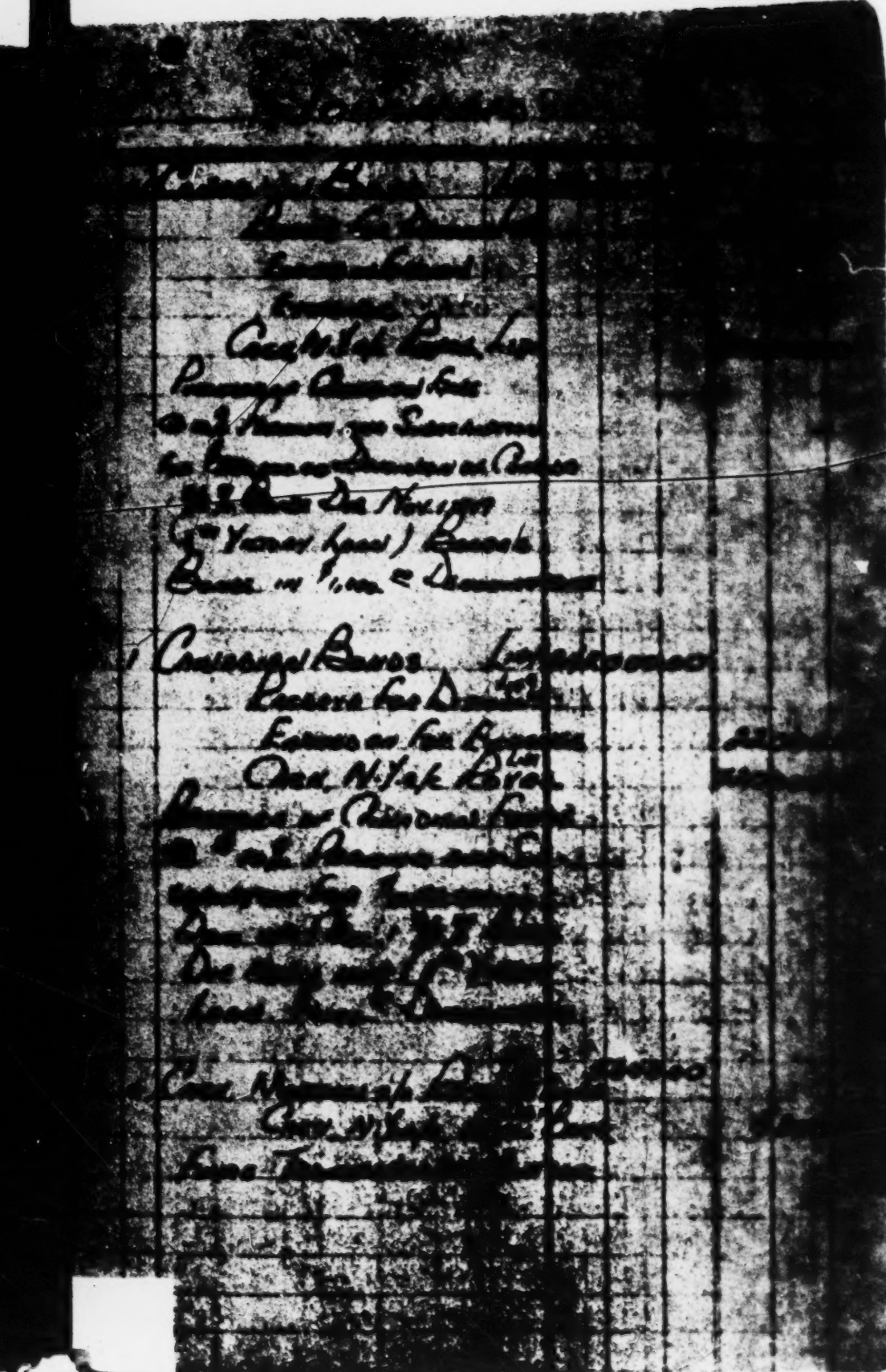
EGAN POTTER & CO. LTD. S.A.



Government Exhibit 377

Bookkeeping record of Compagnia Continentale, S. containing photostatic copies of various ledge. sheets.

Journal

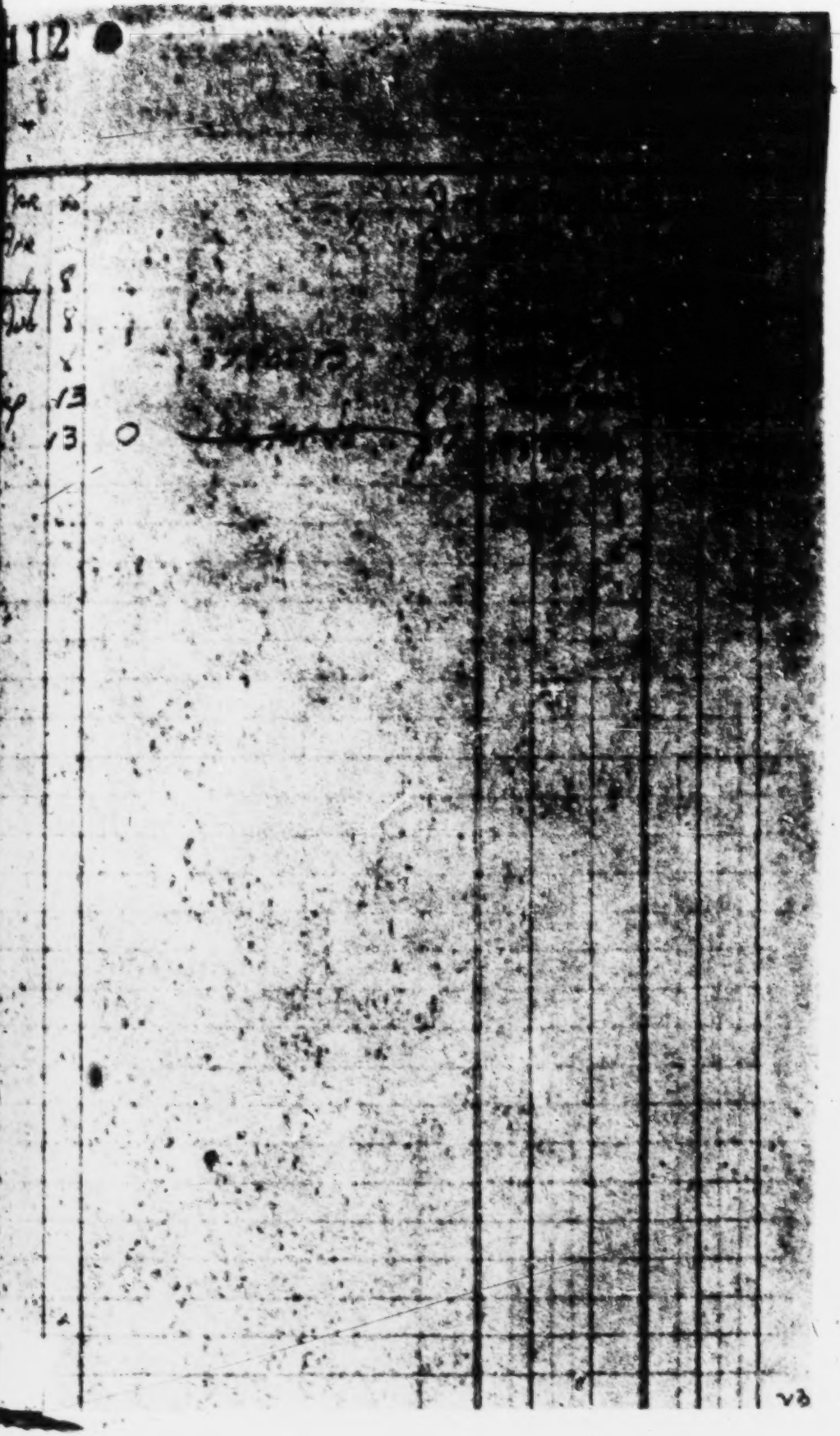
Jan. 18	Bank Charges Lig.		21.67	
	Cash, Montreal a/c			21.67
	Royal Bank Liss			
	$572,000.00 Bonds from which Coupons are Cut 1 Month @ 20% less Premium on U.S. Funds.			
Sep. 20	Cash N.Y. a/c Royal Bank Liss	23857600		
	Commissions Earned Liss			23857600
	Balance Recd of Commissions Due from Dewgate, Ryan Sons S.A. on Sale of 627,952 ½ Hardwood.			
Sep. 20	Cash N.Y. a/c Royal Bank Liss	35157700		
	Commissions Earned Liss			35157700
	Balance Recd of Commissions Due from John Dunbar & Co. Ltd. S.A. on Sale of 627,952 ½ Hardwood 17,500 ½ Dry Antique 5,250 ½ High Shelby and 1,750 ½ Jockey Cap Including Sale of 9/1/15.			

Journal

Nov.	9	Loans Payable Ltd	444.40	
		Cash. N.Y. a/c Royal Ltd		444.40
		To Repay Loan To Angus Kirby (Panama) Ltd. S.A.		
Nov	30	Cash N.Y. a/c Royal Ltd	87623.00	
		Commissions Earned Ltd		87623.00
		Recd From Douglas, Ryan Syn. S.A. $1.00 c/s on Sale of 88,875 c/s less [illegible] Returned, or net of 87,683 c/s		
Nov	30	Cash N.Y. a/c Royal Ltd	92873.00	
		Commissions Earned Ltd		92873.00
		Recd From [illegible] & Co. Ltd. S.A. $1.00 on Sale of 92,873 c/s		
		Cash, Montreal a/c Royal Ltd	20000000	
		Cash. N.Y. a/c Royal Ltd		20000000
		Transfer of Funds. To Montreal		
		Cash N.Y. a/c Royal Ltd	90[illegible]	
		[illegible] Payable Ltd		[illegible]
		[illegible]		
		[illegible]		

Journal

Jan.	[illegible]	Cash Royal Mont. Lis	2000000.00		
		Loans Payable Lis			2000000.00
		Rec'd Loan From Charron Stuart Co. Ltd. S.A.			
Jan.	[illegible]	Securities Lis	2771590.69		
		Cash, Royal Mont Lis			2771590.69
		Purchase of 15000 Shares Common Stock of The [illegible] Studio, S.A.			
Jan.	[illegible]	Bank Charges Lis	187.50		
		Can. Funds a/c Roy. Lis			187.50
		Sampling Charges for 1/2 Yr. Ending Nov. 30, 1946 on Can. Bonds for 3 Mo.			
Feb.	25	Bonds and Securities Lis	1500000.00		
		Loans Receivable Lis			1500000.00
		Rec'd Bonds in Payment of Loans Receivable			
Apr.	2	Commissions Paid	[illegible]		
		Bonds & Securities			[illegible]
		Commissions Paid			


112
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Government Exhibit 379

[illegible], Royal Bank of New York [illegible]

20		2	300.00
20		2	225000.00
20		2	2000.00
20		4	228576.00
20		4	351577.00
8		5	20525.00
8		5	22375.00
5		6	94.908.00
5		6	94533.00
30		7	87.628.00
30		7	92873.00
6		7	90563.69
31		8	51275.00
31		8	86062.00
1	Balance Brt. Frd.		250446.29
30		10	80225.00
30		10	80225.00
30		10	12150.00
30	2[illegible]3.[illegible]9	10	12.50
5		11	91650.00
5	400,102.19	11	105413.40
11		11	184901.00
11		11	600954.60
11		11	50115.00
11	800,000.00	11	53614.94
2		12	187000.00
2	1.024.100.00	13	87100.00
	Balance Carried Frd		1753807.13

Government Publications 379

1

CANADA

1945			
April	24	J3	30000000
May	1	B	220000.00
	4	C3	5300.00
Nov.	9	C6	750000.00
	9	78	[illegible]
Dec.	6	[illegible]	[illegible]
1946			
Jan	30		250000.00
Mar	12		[illegible]

Balance Carried Forward 239707.23

Government Exhibit 379

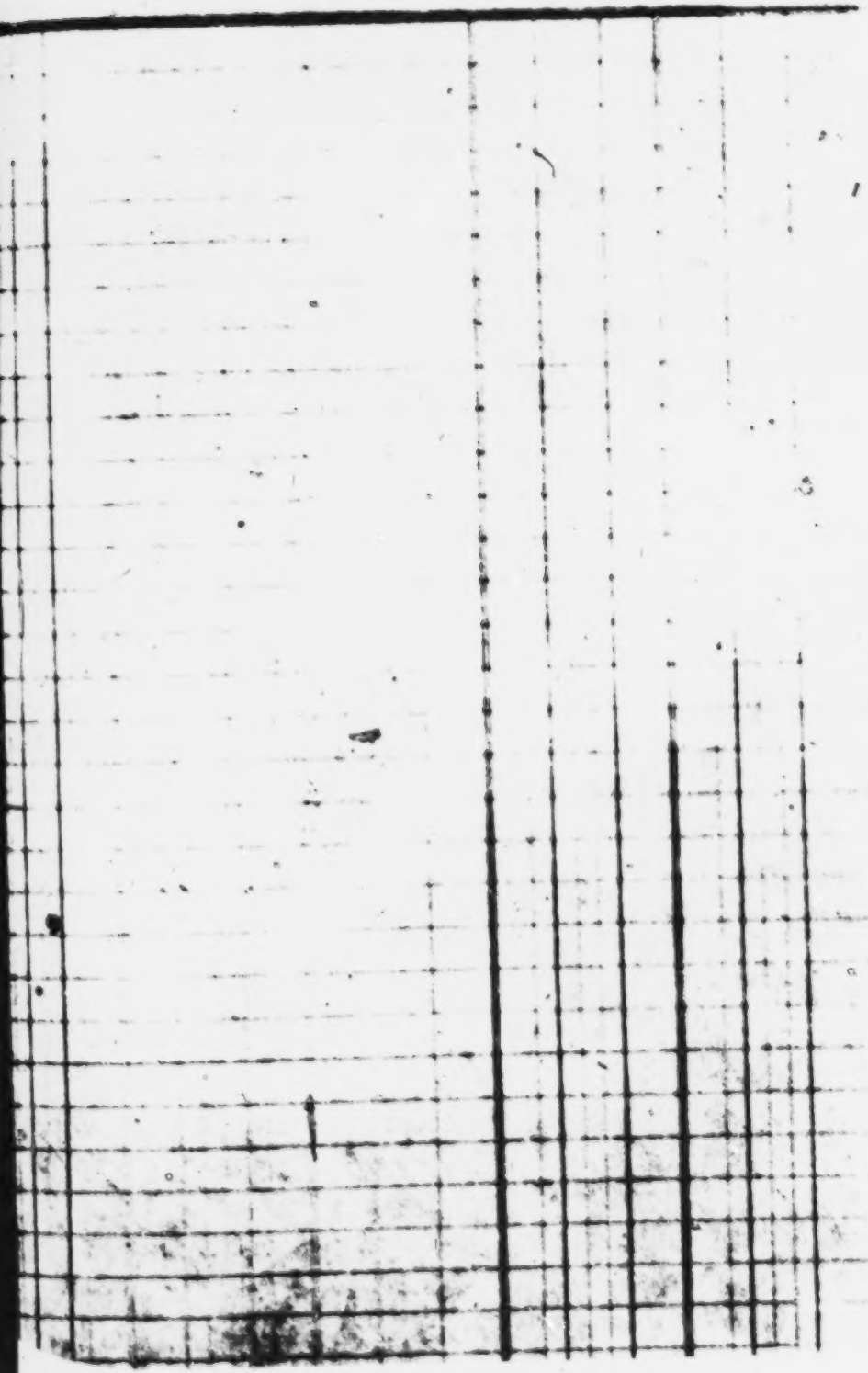
139

K UNISSUED SHARES

APRIL 24 J2 300.00

40 [illegible]

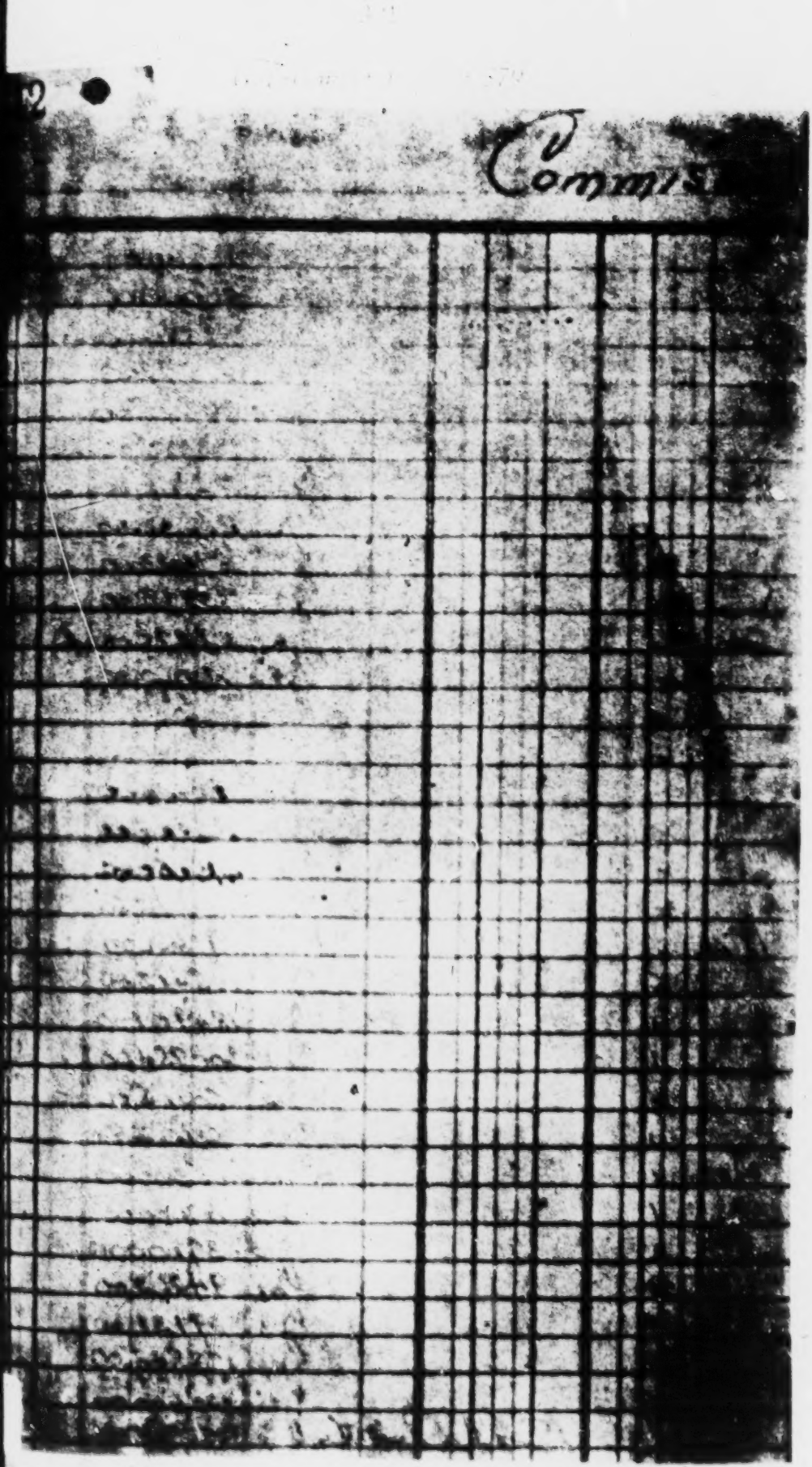
Commissions



Earnings

Apr.	24	J2	75000.00
	24	J2	90000.00
Sep	20	J4	238576.00
	20	J4	351577.00
Oct	8	J5	20525.00
	8	J5	22375.00
Nov	5	J6	94908.00
	5	J6	94535.00
	30	[illegible]	87623.00
	30		92873.00
Dec	31		51275.00
	31		86662.00
Jan.	30	[illegible]	80225.00
	30	[illegible]	[illegible]
	30	[illegible]	[illegible]
	30	[illegible]	[illegible]
Mar	5		[illegible]
	5		[illegible]
	11		[illegible]
	11		[illegible]
	11		[illegible]
	11	[illegible]	[illegible]
Apr	1		[illegible]
	1	[illegible]	[illegible]
	2	[illegible]	[illegible]
	29	[illegible]	[illegible]
	29	[illegible]	[illegible]
	29	[illegible]	[illegible]
Jul	27	[illegible]	120000.00

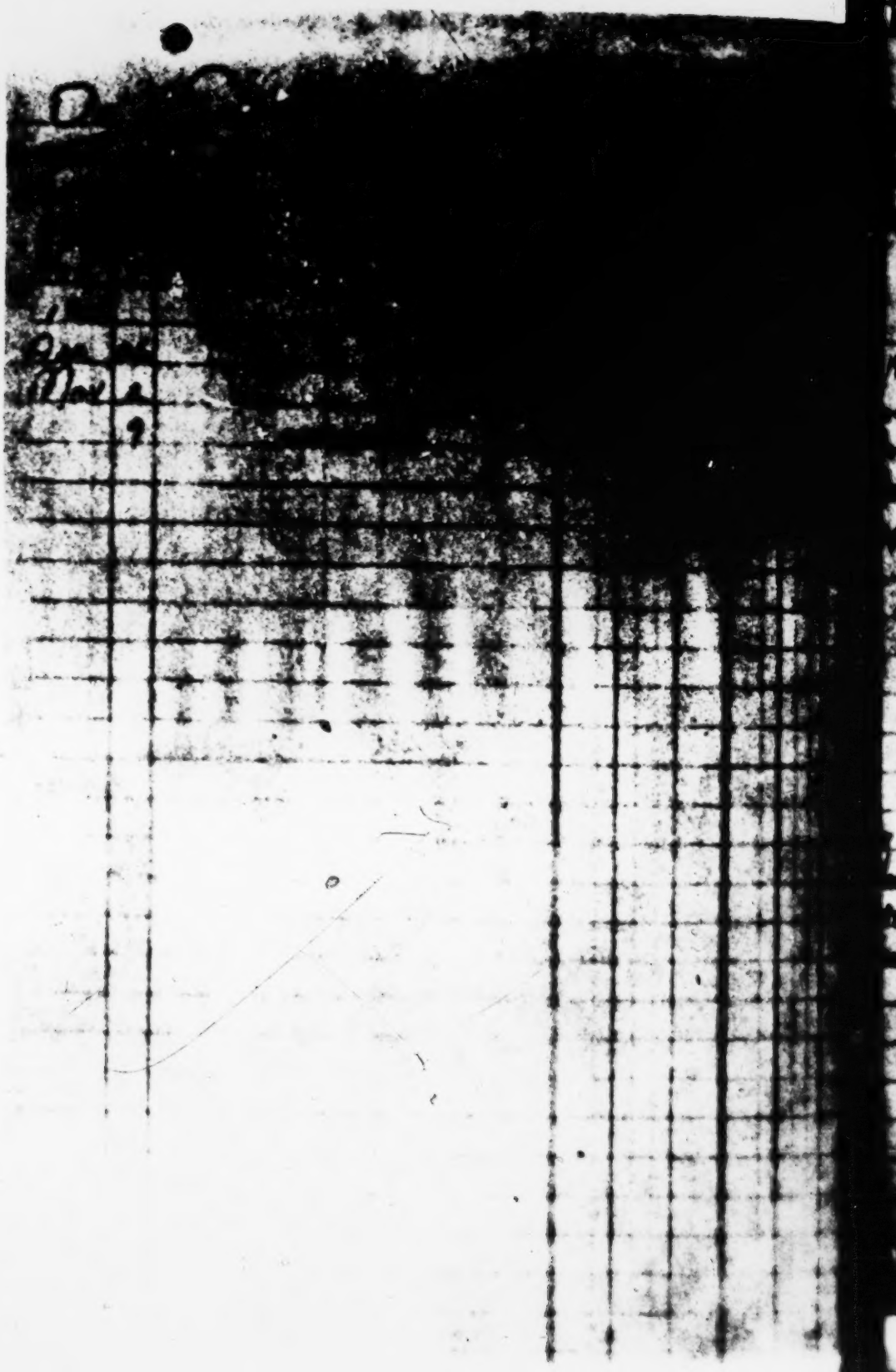
Total Card Ind [illegible]



Earned

		Bal Bat Fed		369182444
May	27		J15	220850 00
	27		J15	41575 00
July	8		J16	25762 50
	8		J16	92235 00
	8		J16	190565 00
Aug	8		J16	52655 00
	8		J16	135545 00
	8		J17	13747 50
Sep	13		J17	5645 00
	13		J17	100406 25
	13		J17	14175 00
	30		J21	65400 00
	30		J21	98100 00
	30		J21	17750 00
	30		J21	525000 00
	30		J21	475000 00
				579000 69

Chandra



154

CANADA, MONTREAL PQ

Royal Bank Canada US Fun

June	18		Jf	[illegible]
Dec	31		Jf	[illegible]
1946				
Feb.	18		Jm	150000.00
Apr	[illegible]		Jm	250000.00
Sep.	24		Jm	100000.00
Nov.	6		Jm	25.12
Dec	26		22	90563.69
	16		22	664096.62
	16		22	1500000.00
1947				
Jan	20		24	2771590.69

Government Exhibit 379

60

1 [illegible] + SECURITIES M/C

[illegible] 16,500 SHARES OF [illegible] 15900000

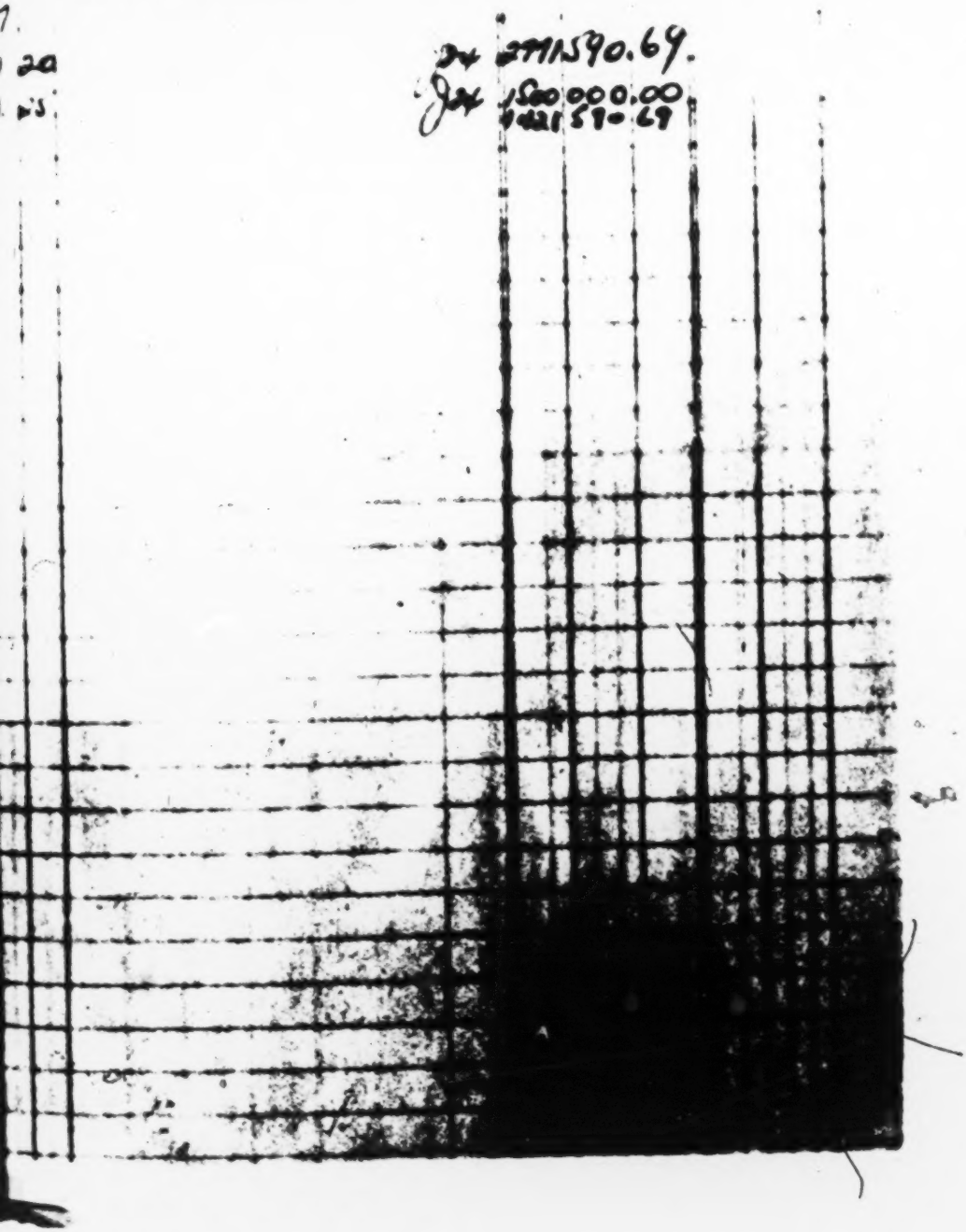
[illegible] STOCK NPV OF

[illegible] CASCADE SECURITIES [illegible]

[illegible] 2991590.69

[illegible] 1500000.00

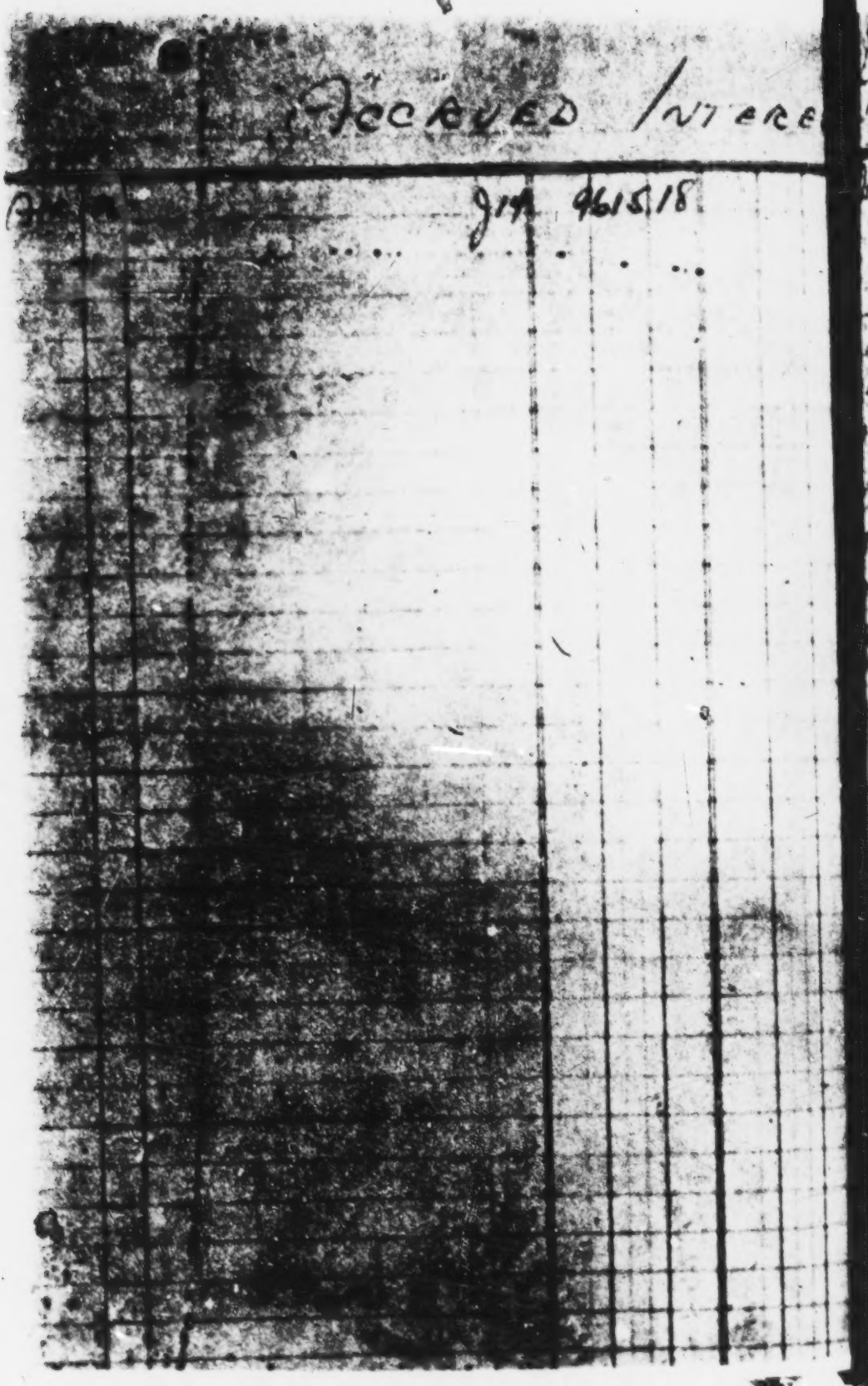
[illegible] 1421590.69

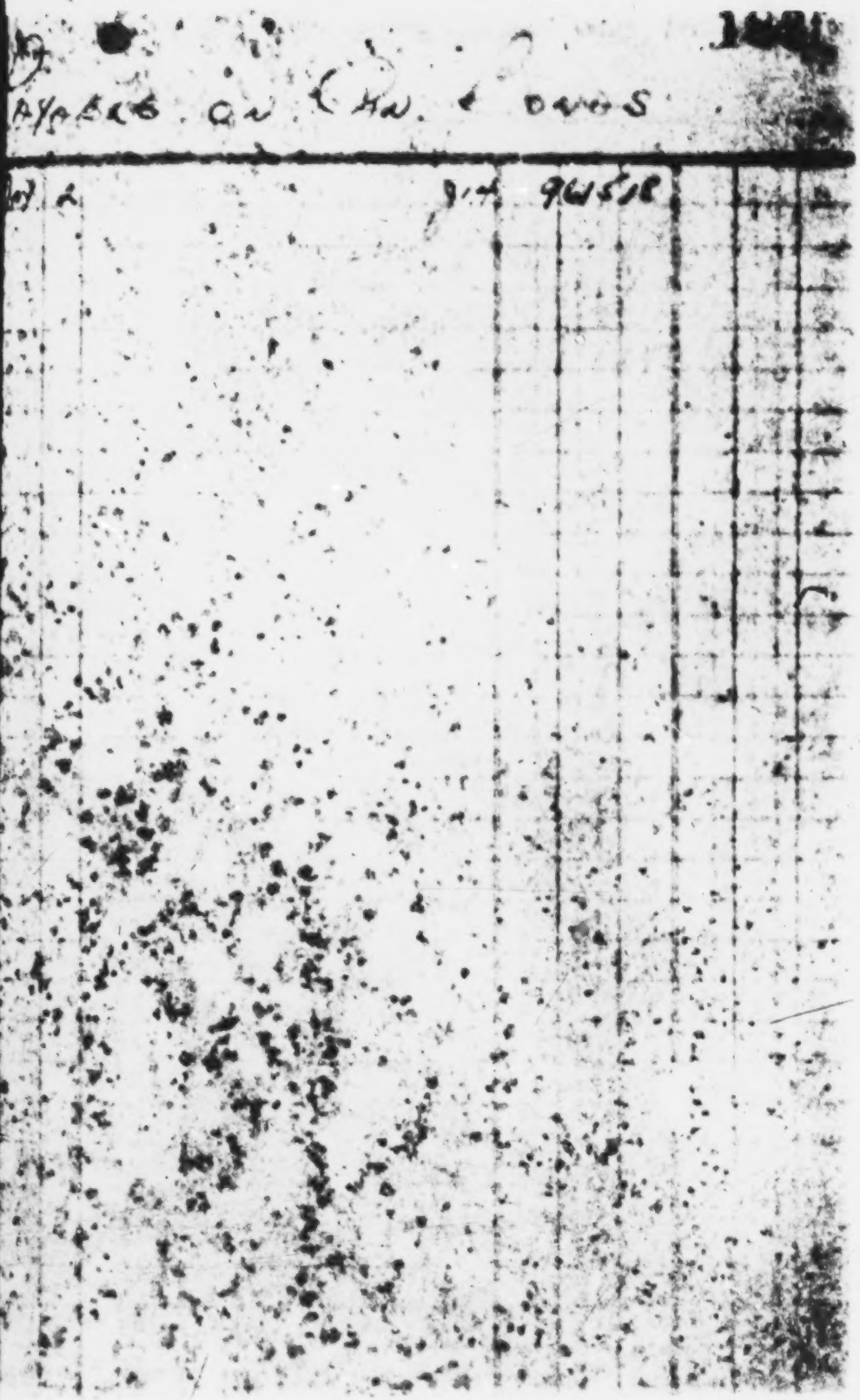


BAE

Oct	25	Due to A.K Pan	5	25000
[illegible]			5	15000
Oct	19		[illegible]	[illegible]
Dec	6	9056869 [illegible]	[illegible]	9056869
1947				
Jan	20	2,000,000	[illegible]	2000000000

Government Exhibit 379

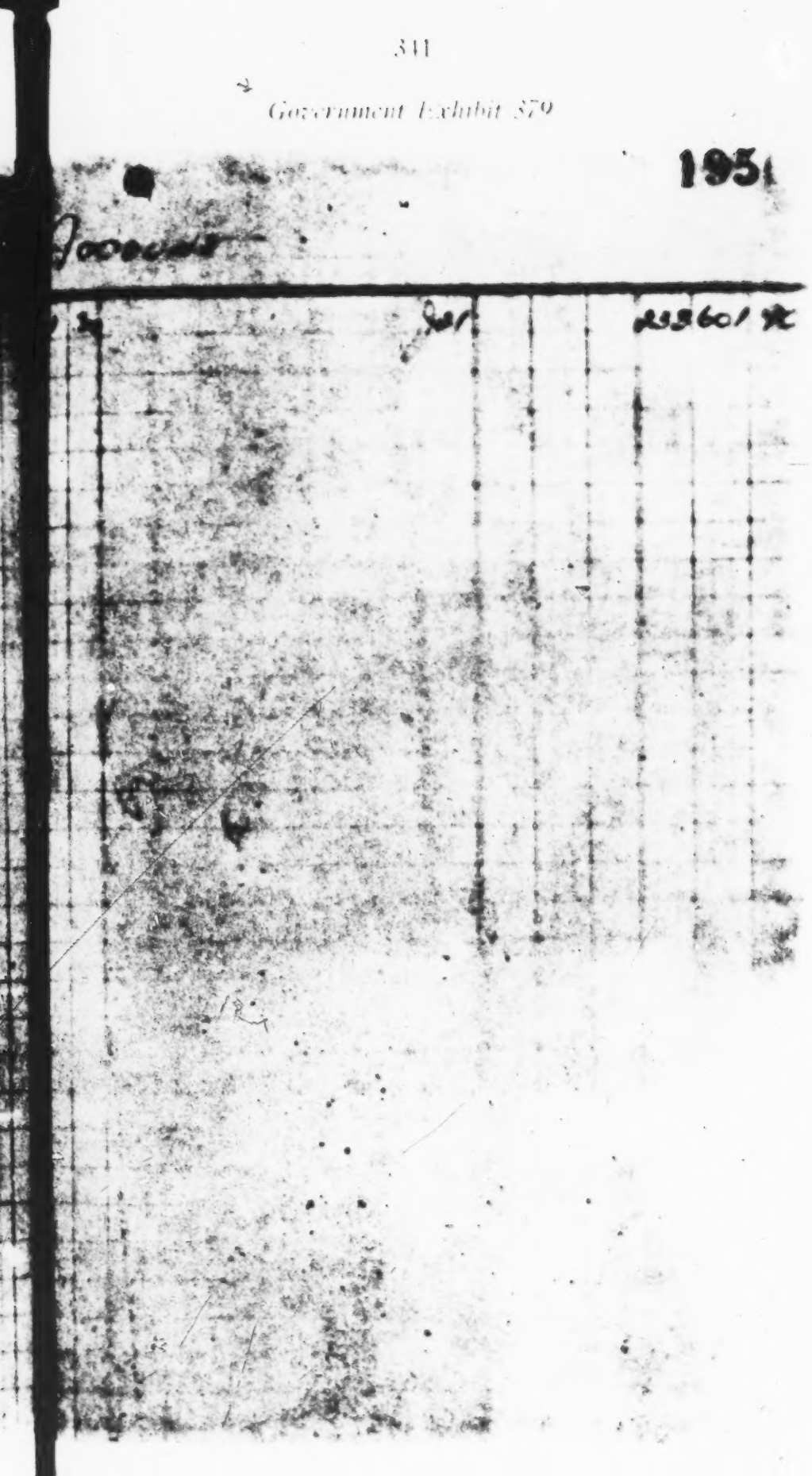




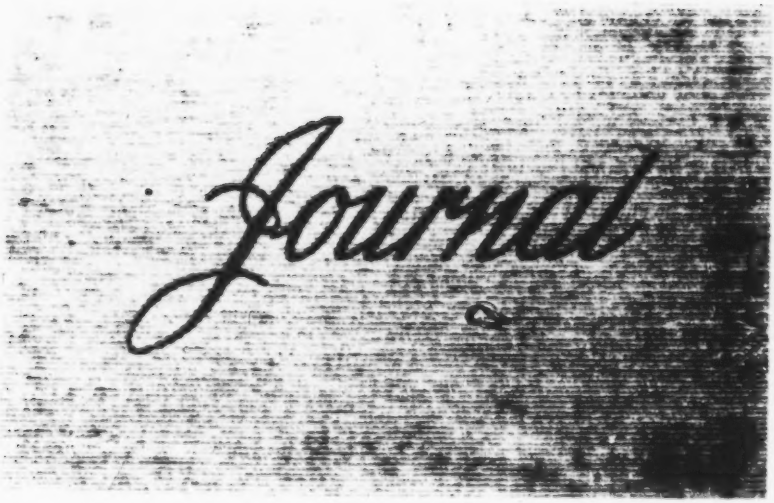
Profit

Government Exhibit 879

1951



Government Exhibit 380



A. F. M.
JJD
RL

July 30, 1952

THE IMPERIAL LINE

Size of sheet 10¼ x 8 inches

Made in the following rulings: (200 pages)

No. **423** Ledger, double entry, 1 A C Index in front.
No. **424** Cash, 2 columns.
No. **425** Journal, 2 columns.
No. **426** Record Ft. & M.

Made in the following rulings: (300 pages)

No. **433** Ledger, double entry, 1 A C Index in front.
No. **434** Cash, 2 columns.
No. **435** Journal, 2 columns.
No. **436** Record, Ft. & M.

This Book is No. 435.

To obtain a duplicate, order by number.

Note: You will find the combination of colors used in ruling this book very soothing to the eyes. The color scheme reduces eye-strain to a minimum.

JOURNAL

DATE				
Mar 5	LEGAL EXPENSES	L157	25000	
	LOANS PAYABLE	L156		25000
	LOAN FROM N.N. KLEIN TO PAY INCORPORATION EXPENSES.			
May 5	LEGAL EXPENSES	L157	15000	
	LOANS PAYABLE	L156		15000
	LOAN FROM N.N. KLEIN TO PAY HARMODIO ARIAS RESIDENT AGENTS FEES FOR 1 YEAR FROM INCORPORATION			
Oct 19	LEGAL EXPENSES	L157	4446	
	LOANS PAYABLE	L156		4446
	LOAN FROM N.N. KLEIN TO PAY FURTHER INCORPORATION EXPENSES			
Nov. 19	CAPITAL STOCK UNISSUED SHARES	L100	100000	
	CAPITAL STOCK	103		100000
	TO ESTABLISH CAPITAL STOCK			

[illegible]

1945

Nov. 20 Cash, Royal Bank of Can. N.Y. a/c L140 2850.00
Capital Stock Unissued Shares L140 2850
Sale of 2850 Shares Capital Stock
@ $1.00 Per Share to [illegible]

Nov. 20 Cash, Royal Bank of Can. N.Y. a/c L140 14508.59
Commissions Earned L140 14508.59
Received Commissions from
Douglas Ryan Syndicate, [illegible]

Nov. 27 Cash, N.Y. a/c Royal Bank of Can. L140 [illegible]50.00
Commissions Earned [illegible]
Rec'd Commissions from [illegible]
Dunbar & Co. Ltd. [illegible]

Nov. 27 Cash, N.Y. a/c [illegible] L140 [illegible]
Commissions Earned L140
Rec'd Commissions from [illegible]
Dunbar & Co. Ltd.

Nov. 30 Cash, N.Y. a/c [illegible]
Commissions [illegible]
Rec'd [illegible]
Ryan [illegible]

194[illegible]

Nov.	30	Cash, N.Y. a/c Royal Bank of Can. [illegible]		26574.15
		Commissions Earned	L147	26574.15
		Received Commissions from Douglas, Ryan Syndicate, S.A.		
Nov.	30	Cash, N.Y. a/c Royal Bank of Can. [illegible]		23628.08
		Commissions Earned	L147	23628.08
		Received Commissions from [illegible] Dunbar & Co Ltd. S.A.		
Nov.	30	Cash, N.Y. a/c Royal Bank of Can.	L140	32804.65
		Commissions Earned	L147	32804.65
		Rec'd Commissions from Douglas, Ryan Syndicate, S.A.		
Nov.	[illegible]	Cash, N.Y. a/c Royal Bank of Can.	L140	115970.09
		Commissions Earned	L147	115970.09
		Rec'd Commissions from Agencias Destiladoras, S.A.		
Dec.	21	Cash, N.Y. a/c Royal Bank of Can.	L140	41803.00
		Commissions Earned	L147	41803.00
		Received Commissions from Douglas, Ryan Syndicate, S.A.		

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JOURNAL

1945					
Dec 31	Cash, N.Y. a/c Royal Bank of Can.	L140	47990.60		
	Commissions Earned	L147			47990.60
	Accrued Commissions from Douglas, Lyon Syndicate, S.A.				
Dec 31	Cash N.Y. a/c Royal Bank of Can.	L140	7007.50		
	Commissions Earned	L147			7007.50
	Acc'd Commissions from John Dunbar & Co. Ltd. S.A.				
Dec 31	Commissions Payable	L100	185475.10		
	Accrued Commissions Payable	L170			185475.10
	To Set up Accrued Commissions				
Dec 31	Organization Expense	L194	2.00		
	Capital Stock/Issued Shares	L161			2.00
	To H.H. Klein for Organization Expense				

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JOURNAL

1946				
Jan. 14	LOANS PAYABLE	L[illegible]	[illegible]4440	
	CASH, N.Y. a/c ROYAL BANK	L[illegible]		[illegible]
	[illegible]			
Mar. 1	COMMISSIONS EARNED	L146	53614.94	
	CASH, N.Y. a/c ROYAL BANK	L141		53614.94
	REFUNDED TO REGAN POTTER CO. LTD. S.A. [illegible]			
	[illegible]			
Mar. [illegible]	[illegible] ROYAL BANK OF CAN.	L140	85450.00	
	COMMISSIONS EARNED	L147		85450.00
	RECEIVED FROM WALDORF & CO. LTD. S.A. COMMISSIONS FOR JANUARY AND FEBRUARY, 1946			
Mar. 11	CASH, N.Y. a/c ROYAL BANK OF CAN.	L140	35335.50	
	COMMISSIONS EARNED	L147		35335.50
	RECEIVED FROM CAMERON, STUART CO. LTD. S.A. COMMISSIONS FOR JANUARY & FEBRUARY, 1946.			
Mar. 18	LOANS RECEIVABLE	L174	1500[illegible]	
	CASH, N.Y. a/c ROYAL BANK	L141		1500[illegible]
	LOAN TO LUIS [illegible] COVERED			

APR. 1 CASH, N.Y. a/c ROYAL BANK OF CAN. L140 $26500
COMMISSIONS EARNED L147 $265.00
RECEIVED COMMISSIONS FROM
WALDORF-C. LTD. S.P. FOR MARCH, 1946

APR. 2 CASH, N.Y. a/c ROYAL BANK OF CAN. L140 15550.00
COMMISSIONS EARNED L147 155.50
RECEIVED COMMISSIONS FROM CAMERON,
STUART CO. LTD. S.P. FOR MARCH, 1946

APR. 20 CASH, MONTREAL a/c ROYAL BK. L134 50000.00
CASH, N.Y. a/c ROYAL BK L141 50000.00
TRANSFER OF FUNDS.

APR. 29 CASH, N.Y. a/c ROYAL BANK OF CAN. L140 47131.00
COMMISSIONS EARNED L147 471.31
RECD FROM WALDORF-C. LTD. S.P.
COMMISSIONS FOR MARCH 1946.

APR. 29 CASH, N.Y. a/c ROYAL BANK OF CAN L140 18000.00
COMMISSIONS EARNED. L147 180.00
RECEIVED COMMISSIONS FROM
CAMERON, STUART CO. LTD. S.P.
FOR MONTH OF MARCH, 1946.

JOURNAL

1946				
May 24	Cash, N.Y. a/c Royal Bank Can Ltd		18725.00	
	Commissions Earned	L147		18725.00
	Received from Cameron, Stuart & Co. Ltd. S.A. for May, 1946 Commissions.			
May 27	Cash, N.Y. a/c Royal Bank of Can Ltd		6030.00	
	Commissions Earned	L147		6030.00
	Received Commissions from Waldorf & Co. Ltd. S.A. for May, 1946			
July 8	Cash, N.Y. a/c Royal Bank of Can. Ltd		20355.00	
	Commissions Earned	L147		20355.00
	Received Commissions from Cameron, Stuart Co. Ltd. S.A.			
July 8	Cash, N.Y. a/c Royal Bank of Can. Ltd		46000.00	
	Commissions Earned	L147		46000.00
	Received Commissions from Waldorf & Co. Ltd S.A. for June, 1946			

JOURNAL

		Cash, N.Y. a/c Royal Bank Can	L140	12580.00	
		Commissions Earned	L147		12580.00
		Commissions Received from Cameron, Stuart Co. Ltd. S.A. for July 1946			
Aug.	8	Cash, N.Y. a/c Royal Bank of Can.	L142	26327.50	
		Commissions Earned	L147		26327.50
		Received Commissions from Waldorf & Co. Ltd. S.A. for July 1946			
Aug.	26	Cash, Montreal a/c Royal Bank Can.	L134	581000.00	
		Cash, N.Y. a/c Royal Bank Can.	L141		581000.00
		Transfer of Funds			
Sep.	16	Cash, N.Y. a/c Royal Bank of Can.	L142	14050.00	
		Commissions Earned	L149		14050.00
		Received Commissions from Cameron, Stuart Co. Ltd. S.A. for August, 1946.			
Sep.	16	Cash, N.Y. a/c Royal Bank of Can.	L142	28225.00	
		Commissions Earned	L149		28225.00
		Commissions Received from Waldorf & Co. Ltd. S.A.			

JOURNAL

1946				
Sep. 27	Cash, Montreal a/c Royal Bank L134		14306.07	
	Cash, N.Y. a/c Royal Bk L14			14306.07
	Transfer of funds to Montreal a/c			
Sep. 30	Cash, Montreal a/c Royal Bank L134		1545.00	
	Commissions Earned L149			1545.00
	Receives Commissions from Cameron, Stuart (S) Ltd. S.A. for September, 1946			
Sep. 30	Cash, Montreal a/c Royal Bank L134		33200.00	
	Commissions Earned L149			33200.00
	Received Commissions from Waldorf (B) Ltd. S.A. for September, 1946			
Sep. 30	Commissions Payable L166		5236547	
	Accrued Commissions Payable L171			5236547
	To Set up Accrued Commissions Payable			
Sep. 30	Cash, Montreal a/c Royal Bank L134		66409.62	
	Commissions Earned L149			66409.62
	Set up Commissions Received from Power (B) Ltd. S.A.			

JOURNAL

[illegible]	Cash, Montreal a/c Royal Bank	L34	1,500,000.00	
	Loans Payable	L157		1,500,000.00
	Received Loan from Regan.			
	Potter & Co. Ltd. S.A.			
	[illegible] Charges	L178	.06	
	Cash, Royal Bank, Montreal	L136		.06
	[illegible] Check			

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JOURNAL

1947

Mar. 27	SURPLUS	L202	636806.51	
	CAPITAL STOCK	L162	285200	
	ACCRUED COMMISSIONS & EXPENSES PAY.	L110	418377.15	
	LOANS RECEIVABLE	L115		15000.00
	CASH, ROYAL BK. MONTREAL	L100		1043035.66
	TO RECORD THE LIQUIDATION OF THE CORPORATION			

P

Government Exhibit 380

1946

APR	20
AUG.	26
SEP	27
	30
	30
NOV	16
	16

1,042,025.66

J 8	50000000
J 10	58100000
J 11	1430707
J 11	154500
J 11	33200.00
J 11	664096.62
J 11	1500000.00
	3436813.69

BANK OF CANADA.

	J12	.06
	J13	1,500000.00
	J13	828.95
	J13	35000.00
	J13	5500000
	J14	528325.40
	J14	272423.62
	J14	1000.00
	J14	1200.00
	J16	1043035.66
		343681369

Cash in New York A/c

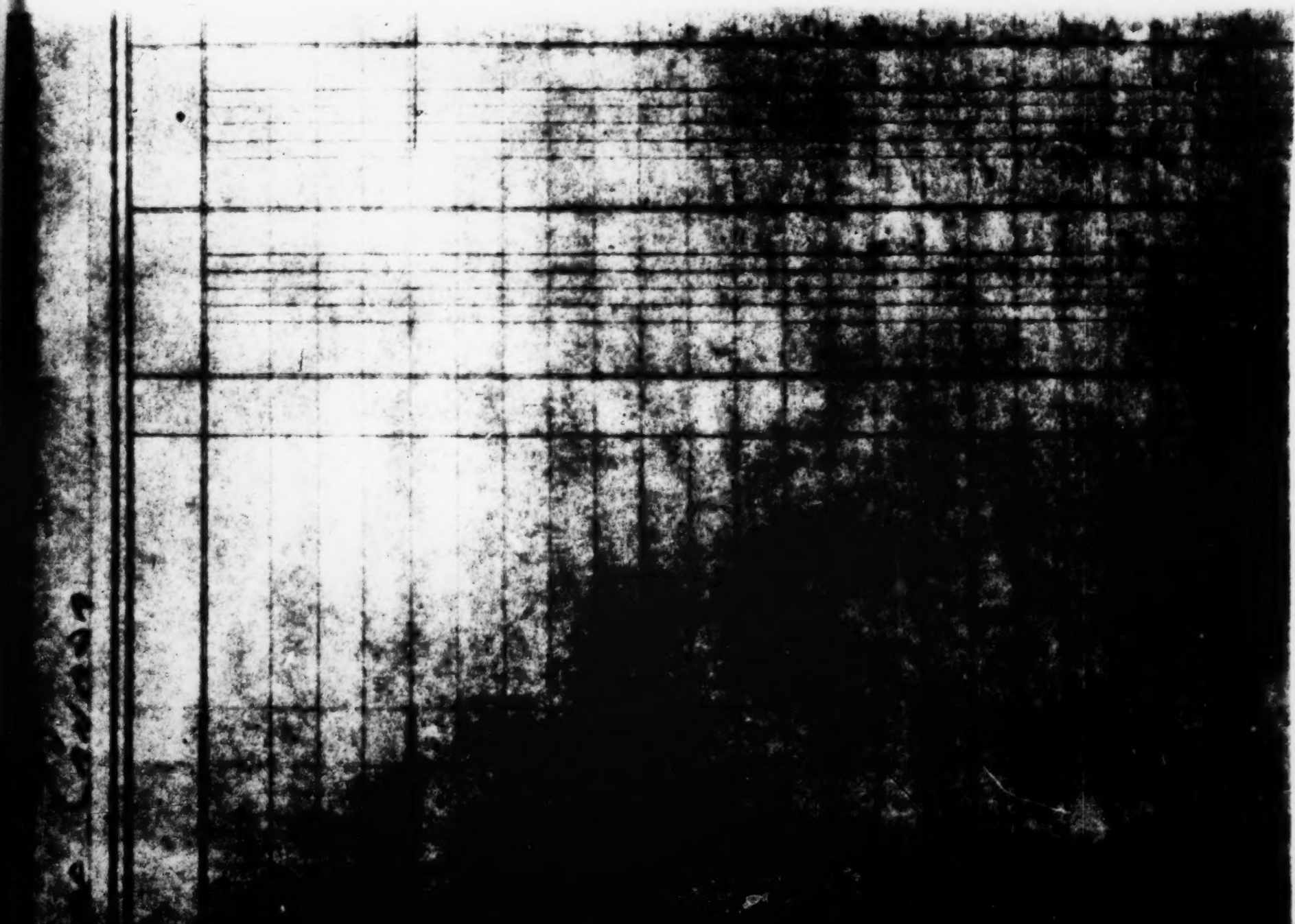
J4	2850.00
J4	1450859
J4	8550.00
J4	525000.00
J4	17815.31
J4	6574.15
J5	253628.08
J5	32804.65
J5	115970.04
J5	41803.00
J6	47990.60
J6	70075.00
J7	8546.00
J7	3533550
J8	52650.00
J8	15550.00
J8	47131.00
J8	18000.00
J8	19725.00
J9	60300.00
J9	20355.00
J9	46000.00
J10	12580.00

Government Exhibit 380

Royal Bank of Canada

1946			
Jan.	14	J7	44440
Mar.	1	J7	5361494
	18	J7	1500000
Apr	20	J8	50000000
Aug	26	J10	58100000
Sep.	27	J11	14306707
			129312641

Government Exhibit 380



MMISSIONS

5361494

[illegible] 19940809

200302303

1945			
Nov.	20	J4	145088.59
	27	J4	5850.00
	27	J4	5250000
	30	J4	1781325
	30	J5	2653415
	30	J5	2536208
	30	J5	328065
	30	J5	115970.09
Dec.	31	J5	41803.00
	31	J6	47990.60
	31	J6	700755.00
1946			
Dec.	11	J7	8545000
	11	J7	35385.50
June	2	J8	52650.00
	2	J8	15550.00
	29	J8	47131.00
	29	J8	18000.00
April	2nd	J9	18725.00
	27	J9	60300.00
May	8	J9	20355.00
	8	J9	46000.00
		J10	125[illegible]
		J10	2[illegible]

Commissions

EARNED

1946

SEP.	16		10	14[illegible]
	16		10	[illegible]
	30		11	154[illegible]
	30		11	[illegible]
DEC.	16	11,949,408.09	11	[illegible]
				200302303

LEGAL

3	25000
3	15000
3	44440
	44440

PAYABLE

1947

MAR. 27 To Pol. A/c 1.5 ~~130912617~~

130912617

...ACCRUED COMMISSIONS AND

J13	35000.00
J13	55000.00
J14	528325.40
J14	272423.62
	8907 4902
J16	418379.15
	1309126.17

ns PAYABLE

1945

Dec. 31 J6 785475.70

1946

Sep. 30 418,377.15 J11 ~~52365047~~ 130912617

LOANS

J7	1500000		
	1500000		

SECURITIES

1947			
Feb 25			13,500,000.00
			1,500,000.00

TRAVELLING

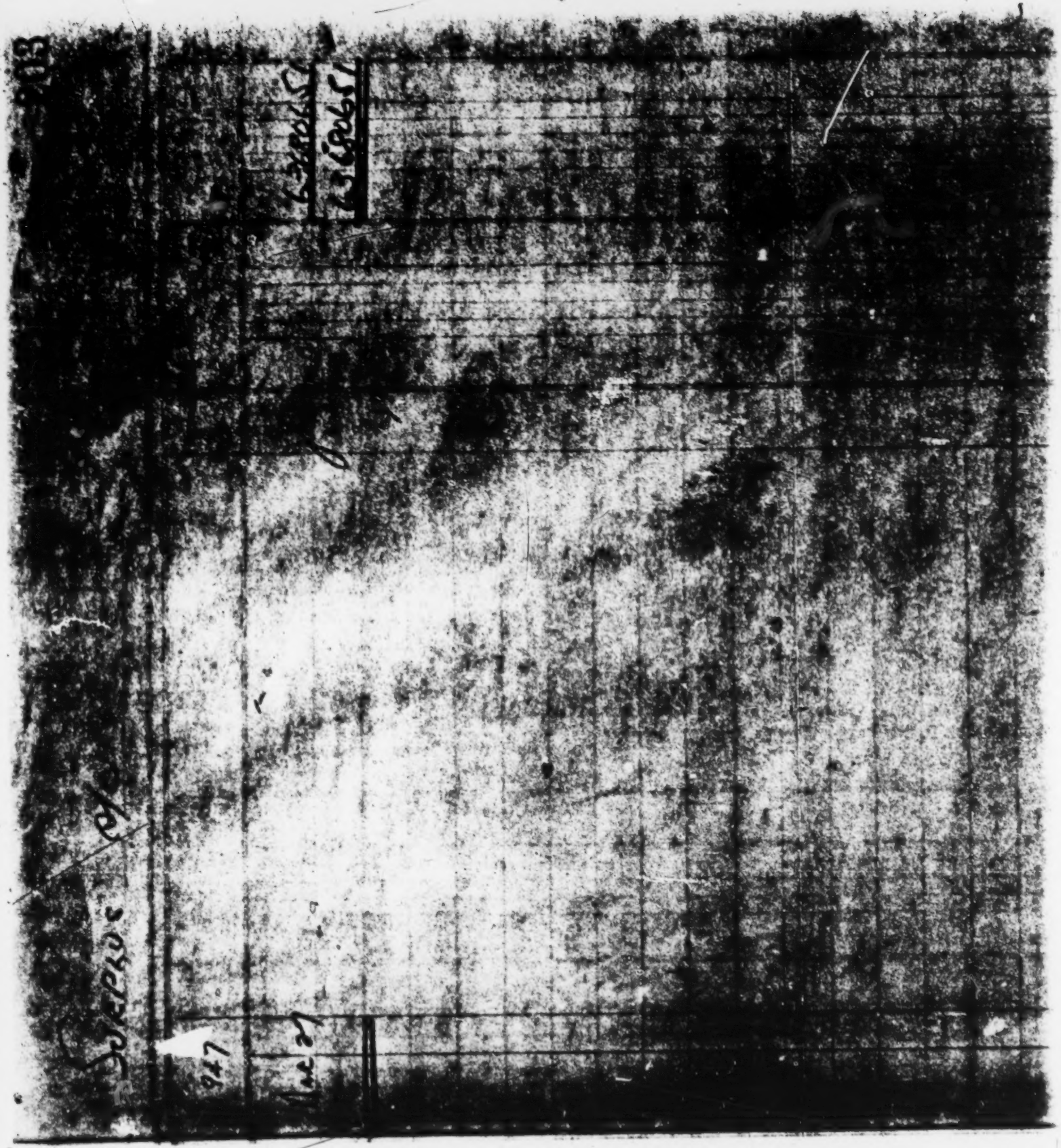
1947				
Mar	21		J14	100000
				100000

EXPENSES

47			
7	To P&L. A/c	Jr	100000
			100000

Government Exhibit

Government Exhibit 380



Government Exhibit 381

Reg. Pot.

December 31, 1946

BALANCE SHEET

	Debit	Credit
ASSETS		
Cash	$ 1,080,086.02	
Canadian Funds	27,625.17	
Canadian Bonds	2,647,000.00	
Securities (Cascade)	150,000.00	
Capital Stock Unissued Shares	4,600.00	
Due from Subscribers to Capital Stock	100.00	
TOTAL ASSETS	$ 3,909,411.19	
LIABILITIES		
Capital Stock		$ 5,000.00
TOTAL LIABILITIES		$ 5,000.00
NET WORTH		3,904,411.19
TOTALS	$ 3,909,411.19	$ 3,909,411.19

Government Exhibit 381

Reg. Pot.

December 31, 1946

TRIAL BALANCE

	Debit	Credit
Cash	$ 1,080,086.02	
Canadian Funds	27,625.17	
Canadian Bonds	2,647,000.00	
Securities (Cascade)	150,000.00	
Capital Stock Unissued Shares	4,700.00	
Commissions Paid	2,164,096.62	
Bank Charges	1,181.85	
Legal Expenses	444.40	
Capital Stock		$ 5,000.00
Commissions Earned		5,797,040.66
Interest Earned on Canadian Bonds		39,491.47
Profit and Loss Account		233,601.90
TOTALS	$ 6,075,134.06	$ 6,075,134.06

PROFIT & LOSS STATEMENT

	Debit	Credit
Commissions Earned		$ 5,797,040.66
Interest Earned on Canadian Bonds		39,491.47
Profit & Loss Account		233,601.90
Bank Charges	$ 1,181.85	
Commissions Paid	2,164,096.62	
Legal Expenses	444.40	
NET PROFIT	3,904,411.19	
TOTALS	$ 6,070,134.06	$ 6,070,134.06

Government Exhibit 381

Reg. Pot. December 31, 1946

EXPLANATION OF ACCOUNTS ON TRIAL BALANCE

Canadian Bonds

Value of Canadian Bonds held in safekeeping by Bank.

Securities

Value of entire stock of wholly owned subsidiary, Cascade Securities Co.

Bank Charges

Safekeeping charges and other miscellaneous charges on Canadian Bonds.

Loans Payable

Loan received from C. & C. Exp.

Interest Earned on Canadian Bonds

Interest received from Canadian Bonds.

Profit & Loss Account

Amount of money earned on purchase of Canadian funds.

Government Exhibit 381

Wal.

December 31, 1946

BALANCE SHEET

	Debit	Credit
ASSETS		
Cash	$ 991,023.27	
Canadian Funds	19,848.50	
Canadian Bonds	2,325,000.00	
Securities (Sierra)	500,000.00	
TOTAL ASSETS	$ 3,835,871.77	
LIABILITIES		
Capital Stock		$ 2,985,660.8
TOTAL LIABILITIES		$ 2,985,660.8
NET WORTH		850,210.9
TOTALS	$ 3,835,871.77	$ 3,835,871.7

Government Exhibit 381

Wal.

December 31, 1946

TRIAL BALANCE

	Debits	Credits
Cash	$ 991,023.27	
Canadian Funds	19,848.50	
Canadian Bonds	2,325,000.00	
Securities (Sierra)	500,000.00	
Commissions Earned		$ 3,504,575.52
Sales Expense	2,809,463.25	
Legal Fees	3,122.50	
Bank Charges	1,052.02	
Taxes	779.20	
Interest Earned		34,835.84
Capital Stock		2,985,660.86
Profit & Loss Account		125,216.52
TOTALS	$ 6,650,288.74	$ 6,650,288.74

PROFIT & LOSS STATEMENT

	Debits	Credits
Commissions Earned		$ 3,504,575.52
Interest Earned		34,835.84
Profit & Loss Account		125,216.52
Sales Expense	$ 2,809,463.25	
Legal Fees	3,122.50	
Bank Charges	1,052.02	
Taxes	779.20	
NET PROFIT	850,210.91	
TOTALS	$ 3,664,627.88	$ 3,664,627.88

Government Exhibit 381

Wal.

December 31, 194

EXPLANATION OF ACCOUNTS SHOWN ON TRIAL BALANCE

CANADIAN BONDS

Value of Canadian Bonds held in safekeeping at Bank.

SECURITIES

Value of stock of wholly owned Subsidiary, The Sierra Co. Ltd.

BANK CHARGES

Safekeeping charges and miscellaneous expenses re Canadian Bonds.

TAXES

1945 Cuban Taxes paid for absorbed company, Dun. Hav.

INTEREST EARNED

Interest earned on Canadian Bonds.

PROFIT & LOSS ACCOUNT

Amount of money earned on purchase of Canadian Funds.

CAPITAL STOCK

A total of 100,000 shares no par value Common Stock was authorized. 60,000 shares of this no par value stock was issued in exchange for the assets and stock of Dun. Hav., and Dun. Pan

Government Exhibit 381

Sea.

December 31, 1946.

BALANCE SHEET

	Debit	Credit
ASSETS		
Cash	$ 378,802.69	
Canadian Funds	44,877.74	
Canadian Bonds	3,375,000.00	
Securities	2,496,013.23	
Stock in Wholly Owned Subsidiaries	300,000.00	
Stock in Wholly Owned Subsidiaries	40,000.00	
TOTAL ASSETS	$ 6,634,693.66	
LIABILITIES		
Capital Stock		$ 6,419,607.38
TOTAL LIABILITIES		$ 6,419,607.38
NET WORTH		215,086.28
TOTALS	$ 6,634,693.66	$ 6,634,693.66

Government Exhibit 381

ca.

December 31, 1946.

TRIAL BALANCE

	Debits	Credits
sh	$ 378,802.69	
nadian Funds	44,877.74	
nadian Bonds	3,375,000.00	
curities UDL 314227	2,496,013.23	
ck in Wholly Owned Subsidiaries (Malecon)	300,000.00	
cks in Wholly Owned Subsidiaries (Cont.)	40,000.00	
vidends Earned		$ 21,306.7
nk Charges	2,626.51	
xes	15,820.70	
gal Fees	4,085.49	
pital Stock		6,419,607.3
erest Earned		41,759.2
neral Expenses	2,500.00	
ofit & Loss Account		177,053.0
TOTALS	$ 6,659,726.36	$ 6,659,726.3

PROFIT & LOSS STATEMENT

	Debits	Credits
vidends Earned		$ 21,306.7
erest Earned		41,759.2
ofit & Loss Account		177,053.0
nk Charges	$ 2,626.51	
xes	15,820.70	
gal Fees	4,085.49	
neral Expenses	2,500.00	
NET PROFIT	215,086.28	
TOTALS	$ 240,118.98	$ 240,118.9

Government Exhibit 381

Sea.

December 31, 1946

Explanation of Accounts Shown on Trial Balance

Canadian Bonds

Value of Canadian Bonds held in safekeeping by Bank.

Securities

As of December 31, 1946, the U.S.Dollar value of stock of U.D.L. purchased and held by Sea. $7,943.

Stock in Wholly Owned Subsidiaries

Value of stock of wholly owned subsidiaries:

Malecon—	$300,000.00
Continental	$ 40,000.00

Dividends Earned

On U.D.L. stock.

Bank Charges

Safekeeping charges, etc. on Canadian Bonds.

Taxes

Payment of Cuban taxes for A.D. Hav., and A.K. Hav.

Interest Earned

On Canadian Bonds.

Profit & Loss Account.

Amount of money earned on purchase of Canadian Funds.

Capital Stock.

A total of 100,000 shares no par value stock was authorized. 60,000 shares of this no par value stock was issued in exchange for the assets and stock of Agencias Dest., A.K. Hav., A.K. Pan., Ass. Fac., Doug. Ry.

Government Exhibit 381

osta

December 31, 1946

BALANCE SHEET

	Debit	Credit
Assets		
sh	$ 26,193.98	
counts Receivable (Cam. Stu.)	5,004.19	
Total Assets	$ 31,198.17	
Liabilities		
pital Stock		$ 10,000.00
counts Payable (Kent)		750.00
Total Liabilities		$ 10,750.00
Net Worth		20,448.17
Totals	$ 31,198.17	$ 31,198.17

Government Exhibit 381

Costa.

December 31, 1946

TRIAL BALANCE

	Debit	Credit
Cash, Royal, Havana.	$ 26,193.98	
Purchases	1,081,032.38	
Sales		$ 1,109,807.02
Bank Charges	3,822.77	
Capital Stock		10,000.00
Purchases Returns & Allowances		88,807.22
Sales Returns & Allowances	92,560.92	
Accounts Payable (Kent)		750.00
Accounts Receivable	5,004.19	
Capital Tax	750.00	
TOTALS	$ 1,209,364.24	$ 1,209,364.24

PROFIT & LOSS STATEMENT

Purchases	$ 1,081,032.38	
Sales		$ 1,109,807.02
Bank Charges	3,822.77	
Purchases Returns & Allowances		88,807.22
Sales Returns & Allowances	92,560.92	
Capital Tax	750.00	
NET PROFIT	20,448.17	
TOTALS	$ 1,198,614.24	$ 1,198,614.24

Government Exhibit 381

sta.

December 31, 19

Explanation of Accounts Shown on Trial Balance

nk Charges

Collection charges paid to Bank for collection of drafts.

pital Stock

100 Shares Common Stock @$100.00 par value was issued and sold to Comp. Continental.

counts Receivable

Amount owed to Costa by Cam. Stu.

Government Exhibit 381

Sam. Scot.

December 31, 1946

BALANCE SHEET

	Debit	Credit
ASSETS		
Cash, Royal, Montreal	$ 100,000.00	
Cash, Royal, Montreal	36,120.89	
Cash, Royal, Havana	14,365.10	
TOTAL ASSETS	$ 150,485.99	
LIABILITIES		
Capital Stock		$ 10,000.00
TOTAL LIABILITIES		$ 10,000.00
NET WORTH		140,485.99
TOTALS	$ 150,485.99	$ 150,485.99

Government Exhibit 381

Ram. Scot. December 31, 194

TRIAL BALANCE

	Debit	Credit
Cash, Royal, Montreal	$ 100,000.00	
Cash, Royal, Montreal	36,120.89	
Cash, Royal, Havana.	14,365.10	
Purchases	14,458,526.48	
Sales Returns & Allowances	23,226.84	
Sales		$ 14,686,334.58
Bank Charges	1,687.46	
Travelling Expenses	1,750.00	
Legal Fees	2,000.00	
Capital Stock		10,000.00
Sales Expenses	40,650.00	
Capital Tax	3,000.00	
General Expenses	15,007.81	
TOTALS	$14,696,334.58	$14,696,334.58

PROFIT & LOSS STATEMENT

	Debit	Credit
Purchases	$14,458,526.48	
Sales Returns & Allowances	23,226.84	
Sales		$14,686,334.58
Bank Charges	1,687.46	
Travelling Expenses	1,750.00	
Legal Fees	2,000.00	
Sales Expense	40,650.00	
Capital Tax	3,000.00	
General Expenses	15,007.81	
NET PROFIT	140,485.99	
TOTALS	$14,686,334.58	$14,686,334.58

Government Exhibit 381

Ram. Scot.

December 31, 1946

EXPLANATIONS

Capital Stock

100 Shares Common Stock at par value of $100.00 each was issued and sold to Comp. Continental.

Government Exhibit 381

Kent

December 31, 1946

BALANCE SHEET

	Debit	Credit
ASSETS		
Cash, Royal, Havana.	$ 68,295.42	
Accounts Receivable (Coast)	750.00	
TOTAL ASSETS	$ 69,045.42	
LIABILITIES		
CAPITAL STOCK		$ 10,000.00
Surplus 1945		18,882.[illegible]
TOTAL LIABILITIES		$ 28,882.[illegible]
NET WORTH		40,163.[illegible]
TOTALS	$ 69,045.42	$ [illegible]

Government Exhibit 381

December 31, 1946

Kent

TRIAL BALANCE

	Debit	Credit
Cash, Royal, Havana.	$ 68,295.42	
Purchases	3,690,711.78	
Purchases Returns & Allowances		$ 6,375.00
Sales		3,772,991.23
Sales Returns & Allowances	36,139.80	
General Expenses	6,433.25	
Legal Expenses	3,600.00	
Capital Stock		10,000.00
Surplus 1945		18,882.08
Bank Charges	68.00	
Capital Taxes	2,250.00	
Accounts Receivable (Coast)	750.00	
TOTALS	3,808,248.31	$ 3,808,248.31

PROFIT & LOSS STATEMENT

Purchases	$ 3,690,711.78	
Purchases Returns & Allowances		$ 6,375.00
Sales		3,772,991.23
Sales Returns & Allowances	36,139.80	
General Expenses	6,433.25	
Legal Expenses	3,600.00	
Bank Charges	68.00	
Capital Taxes	2,250.00	
NET PROFIT	40,163.34	
TOTALS	$ 3,779,366.23	$ 3,779,366.23

Government Exhibit 381

ent

December 31, 194

Explanations

APITAL STOCK

200 Shares @ $50.00 par value Common Stock issued, and pur
chased by Comp. Continental.

Government Exhibit 381

Cam. Stu.

December 31, 1946

BALANCE SHEET

	Debit	Credit
ASSETS		
Cash	$ 4,236,849.95	
TOTAL ASSETS	$ 4,236,849.95	
LIABILITIES		
Capital Stock		$ 10,000.00
Accounts Payable (Coast)		5,004.19
TOTAL LIABILITIES		15,004.19
NET WORTH		4,221,845.76
TOTALS	$ 4,236,849.95	$ 4,236,849.95

Government Exhibit 381

S.

December 31, 1946

TRIAL BALANCE

	Debits	Credits
ash	$ 4,236,849.95	
urchases	9,602,255.20	
urchases Returns & Allowances		$ 102,580.42
ales		19,230,270.64
ales Expense	1,797,964.50	
egal Expenses	1,000.00	
apital Stock		10,000.00
ample Expense	80.50	
ales Returns & Allowances	95,182.22	
ommissions Payable Expense	3,614,522.64	
ank Charges	.24	
ccounts Payable (Coast)		5,004.19
TOTALS	$19,347,855.25	$19,347,855.25

PROFIT & LOSS STATEMENT

urchases	$ 9,602,255.20	
urchases Returns & Allowances		$ 102,580.42
ales		19,230,270.64
ales Returns & Allowances	95,182.22	
ales Expense	1,797,964.50	
egal Expense	1,000.00	
ample Expense	80.50	
ank Charges	.24	
ommissions Payable Expense	3,614,522.64	
NET PROFIT	4,221,845.76	
TOTALS	$19,332,851.06	$19,332,851.06

Government Exhibit 381

December 31, 1946

S.

EXPLANATION OF ACCOUNTS SHOWN ON TRIAL BALANCE

PURCHASES RETURNS & ALLOWANCES

All charges incidental to the handling of merchandise passed on to the supplier.

SALES EXPENSE

Expenses necessitated by sales of merchandise.

LEGAL EXPENSES

Fees for Panamanian legal representatives.

SALES RETURNS AND ALLOWANCES

Merchandise returned to supplier and credit allowed to Accounts Receivable.

COMMISSIONS PAYABLE EXPENSE

Amount of commissions paid to Asociados Inversionistas on sales, and including commissions paid Wal.

CAPITAL STOCK

100 shares of $100.00 par value Common Stock issued and sold to Comp. Cont.

ACCOUNTS PAYABLE

Amount of money owed to Coast.

Government Exhibit 381

nt.

December 31, 1946

BALANCE SHEET

	Debit	Credit
Assets		
ck in Wholly Owned Subsidiaries	$ 40,000.00	
Total Assets	$ 40,000.00	
Liabilities		
pital Stock		$ 40,000.00
Total Liabilities		$ 40,000.00
Net Worth		—0—
Totals	$ 40,000.00	$ 40,000.00

Government Exhibit 381

Cont.

December 31, 1946

TRIAL BALANCE

	Debit	Credit
tock in Wholly Owned Subsidiaries	$ 40,000.00	
Capital Stock		$ 40,000.00
TOTALS	$ 40,000.00	$ 40,000.00

Government Exhibit 381

Cont. December 31, 1945

Explanation of Accounts Shown on Trial Balance

Stock in Wholly Owned Subsidiaries

Cont. purchased and holds Common Stock in each of the following wholly owned subsidiaries:

Cam. Stu.	— 100 Shares @ $100.00 par value —	$10,000.00
Kent	— 200 Shares @ $ 50.00 par value —	$10,000.00
Costa	— 100 Shares @ $100.00 par value —	$10,000.00
Ram. Scott	— 100 Shares @ $100.00 par value —	$10,000.00
	Total	$40,000.00

Capital Stock

Cont. issued 4,000 shares Common Stock @ $10.00 per share which was purchased by Sea.

Government Exhibit 388

Received from the Tivoli Trading Co., S. A.

ONE HUNDRED DOLLARS ($100.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

Harry Silver

Harry Silver

Government Exhibit 388

Received from the Tivoli Trading Co., S.A.

TWO HUNDRED DOLLARS ($200.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

Ellis Rosenberg

Government Exhibit 388

Received from the Tivoli Trading Co., S. A.

FIVE HUNDRED DOLLARS ($500.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

Morris O. Alprin

Government Exhibit 388

Received from the Tivoli Trading Co., S. A.

ONE THOUSAND DOLLARS ($1,000.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

Albert Roer

Albert Roer

Government Exhibit 388

Received from the Tivoli Trading Co., S. A.

FIVE HUNDRED DOLLARS ($500.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

I. A. Koerner

Government Exhibit 389

Received from the Tivoli Trading Co., S. A.

ONE HUNDRED FIFTY DOLLARS ($150.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

William Rokoff

William Rokoff

Government Exhibit 396

CUENTA No

NOMBRE CIA. EXPORTADORA FERNANDINA, S. A.
(ESCRIBASE A MAQUINA. CONSIGNANDO PRIMERO EL APELLIDO)

DIRECCION COMERCIAL c/o Dr. Alberto Valverde
Edificio Ariosa Depto.202

DIRECCION PARTICULAR Cuba 355, ~~Havana~~, Cuba

TELEFONO: OFICINA _____ RESIDENCIA _____

OCUPACION _____

FIRMA _____
(FIRME EN ESTA LINEA)
Signature of Mr. Al Roer, President

ABIERTA Mar. 17/50 CERRADA

Signature authenticated. Havana, Cuba. Mar.23/50

THE BANK OF NOVA SCOTIA
Asst. Manager
ADMINISTRADOR O CONTADOR

C-10

CUENTA No.

NOMBRE CIA. EXPORTADORA FERNANDINA, S. A.
(ESCRIBASE A MAQUINA. CONSIGNANDO PRIMERO EL APELLIDO)

DIRECCION COMERCIAL _____

DIRECCION PARTICULAR _____

TELEFONO: OFICINA _____ RESIDENCIA _____

OCUPACION _____

FIRMA Kate Roer
(FIRME EN ESTA LINEA)
Treasurer

ABIERTA _____ CERRADA _____

ADMINISTRADOR O CONTADOR

C-10

AGENCY OF

THE BANK OF NOVA SCOTIA

NAME Cia Exportadora Fernandina S. A.

ADDRESS c/o Dr. Alberto Valverde
Edifico Ariosa Depto 202
Cuba 355 Havana Cuba

CHEQUES IN DETAIL	DEPOSITS	DATE	NEW BALANCE
BALANCE BROUGHT FORWARD			
	272,423.62	MAR 27 50	272,423.62 - *
50,000.00		APR 10 50	222,423.62 -
75,000.00		APR 21 50	147,123.62 -
75,000.00		MAY 2 50	72,423.62 - *
70,000.00		MAY 18 50	2,423.62 - *
2,000.00		JUN 8 50	423.62 - *

Government Exhibit 806

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Government Exhibit 396

AGENCY OF

THE BANK OF NOVA SCOTIA

NAME Cia Exportadora Fernandina S. A.

ADDRESS c/o Dr. Alberto Valverde
Edifico Ariosa Depto 202
Cuba 355 Havana Cuba

CHEQUES IN DETAIL	DEPOSITS AE	DATE	NEW BALANCE
BALANCE BROUGHT FORWARD		OCT 31 50	423.62
31.34		[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
26.00		NOV 20 [illegible]	554.07 — *
31.34		AUG 18 [illegible]	523.53 — *
523.53		[illegible]	.00 —

Ck. F/o A. Roev. [illegible]

Government Exhibit 396

THE BANK OF NOVA SCOTIA

49 WALL STREET
NEW YORK

ACKNOWLEDGMENT OF DEPOSIT RECEIVED BY MAIL
NO. 3483

March 27, 50
19

To Cia. Exportadora Fernandina, S.A.
c/o Dr. Alberto Valverde
~~Edificio Arioso Depto. 202~~
Cuba 355, Havana, Cuba

We credit your account as indicated below, being proceeds of deposit received in Havana, Cuba advice March 23, 1950

PARTICULARS	Exchange	
		272,423.62
DEDUCTIONS:		
TOTAL		
NET CREDIT		272,423.62

Two hundred seventy two thousand four hundred ~~twenty three and~~ 62/100 dollars*

(Manager in Canada)

41

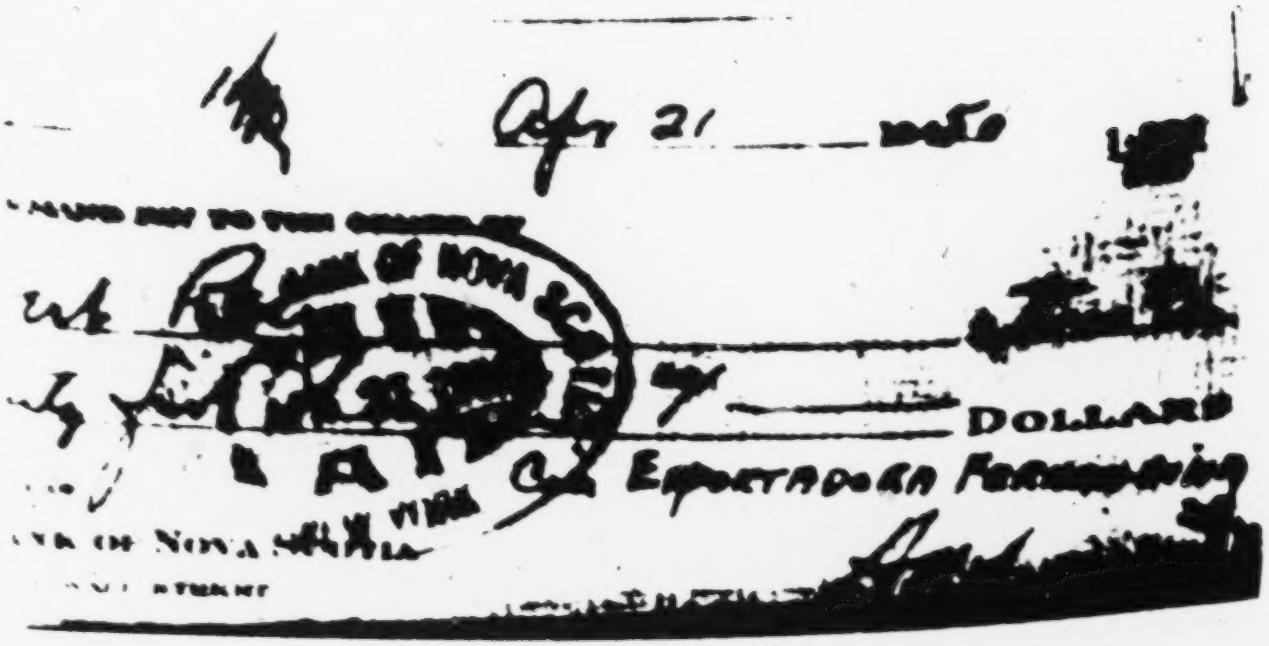
PRINTED IN CANADA

Manager

Government Exhibit 39a

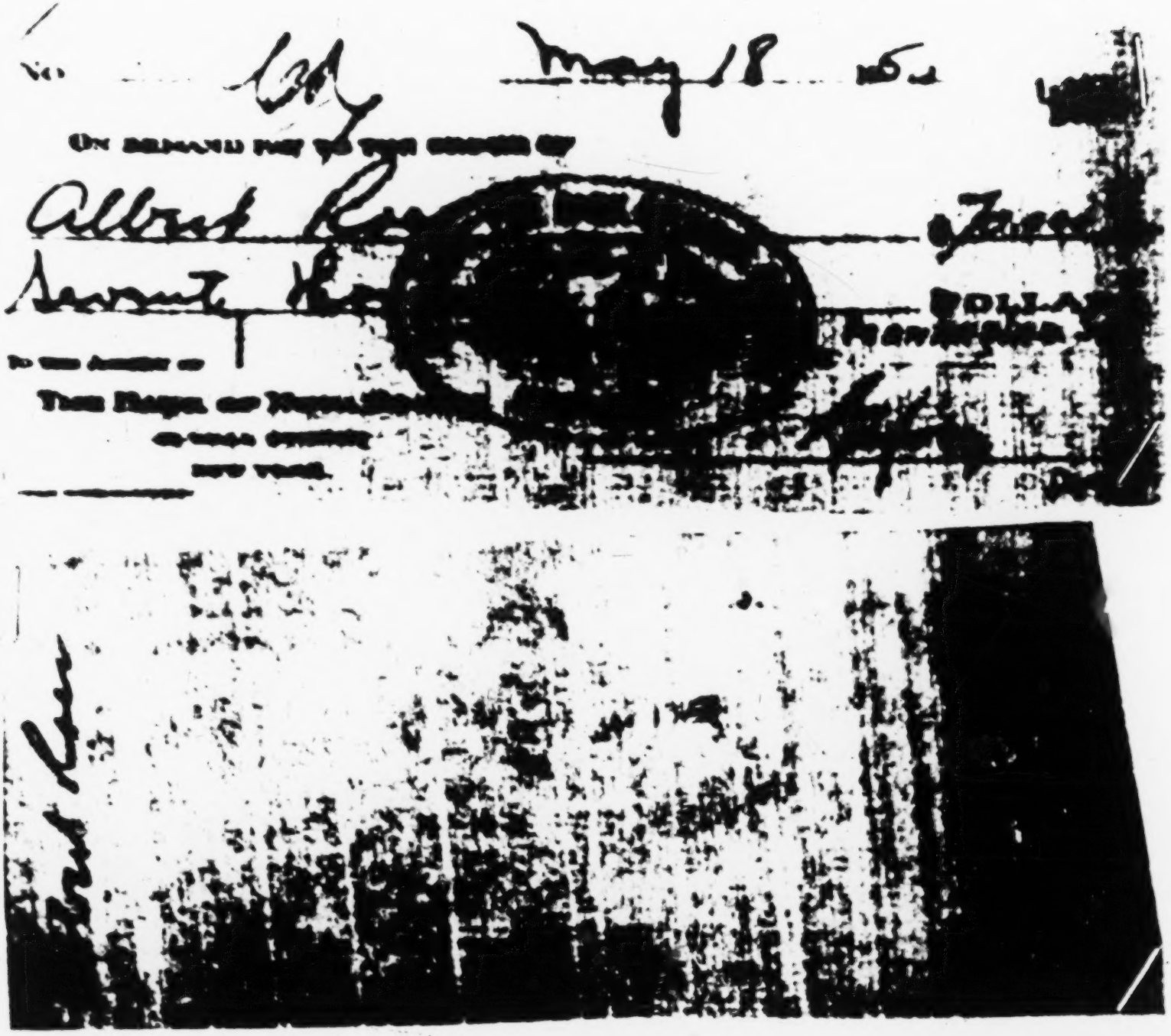
Government Exhibit 396

Government Exhibit 396

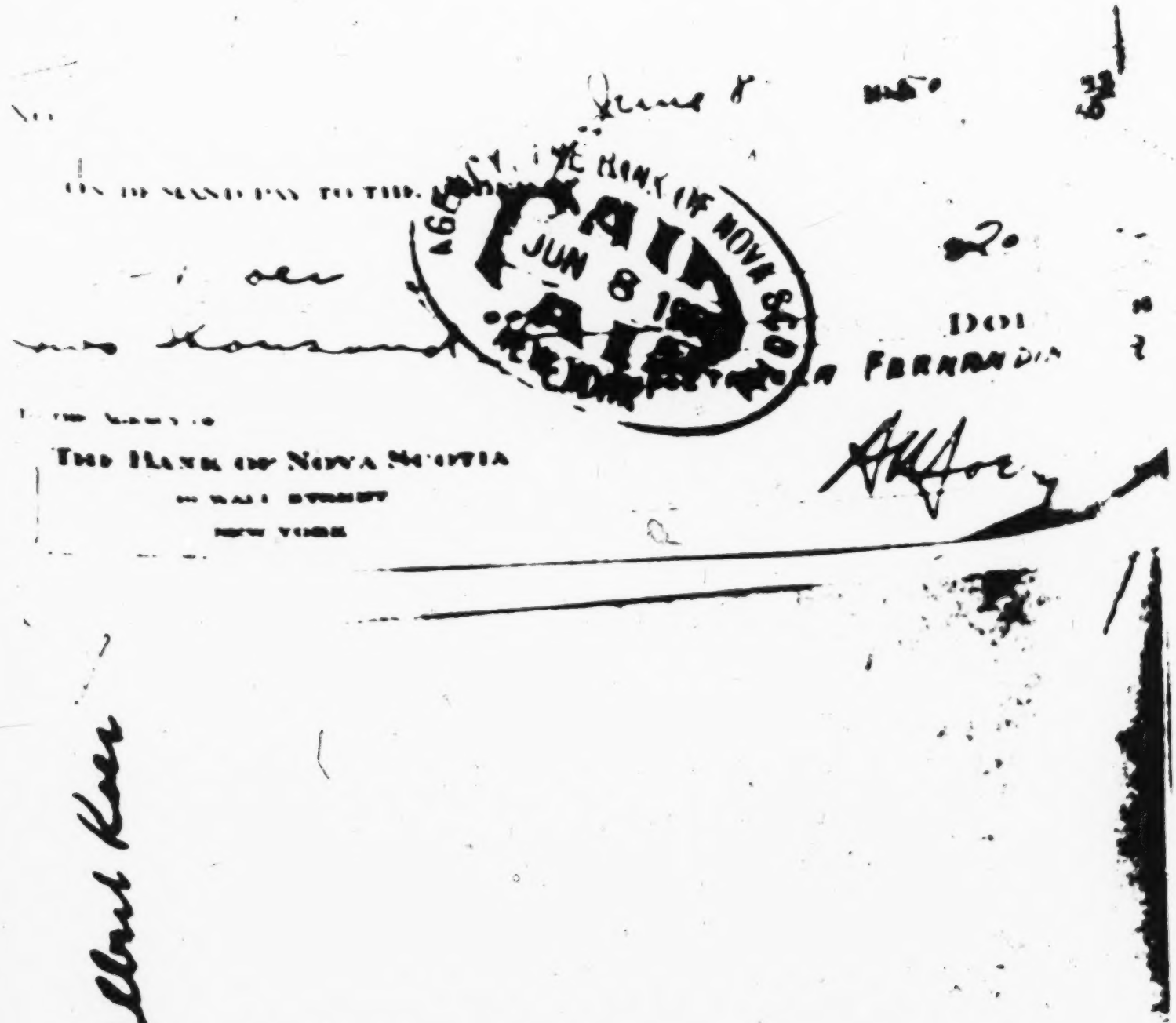


Government Exhibit 396

Government Exhibit 396



Government Exhibit 396



Government Exhibit 403

Translation of certification by the Central Registrar of corporations in Cuba that Cia. Commercial La Ribera, S. A. was organized in Cuba on June 29, 1946.

Government Exhibit 407

Date of Discrepancy	Particulars	Particulars	Date of Correcting Entry	Initials
Jan 9/46	Roca v Roca - in the matter Receiver of the Property of Gaspar Received from Hodges Rivers letter dated [illegible] -	of the Petition of Emilio De Aldrey as Roca defendant [illegible] Pantaleon [illegible]		
[illegible] 1240.	Luisa Natali Bartolomei Gaspar Roca (otherwise Manufacturers Trust	De Roca Plaintiff against Known as Gaspar Roca Roca) Co and Royal Bank of [illegible]		
[illegible] 5/46	Grand Jury Subpoenas by Dupuis Frères Ltd we replied by letter Jan [illegible]	Re check $99.60 Drawn on as charged to their acct aug 8/[illegible] to Frank S Hogan Ltd 133 [illegible]		
[illegible]	Warrant of Attachment against Berkhout [illegible]	- Igoma Import & Export [illegible] Cia [illegible]		
Feb 18 9 50 PM	Warrant of Attachment Controls administration and Cia Ramsey Scott Exportadores [illegible]	Philip B Fleming Temporary Plaintiff against R C Williams [illegible]		

407

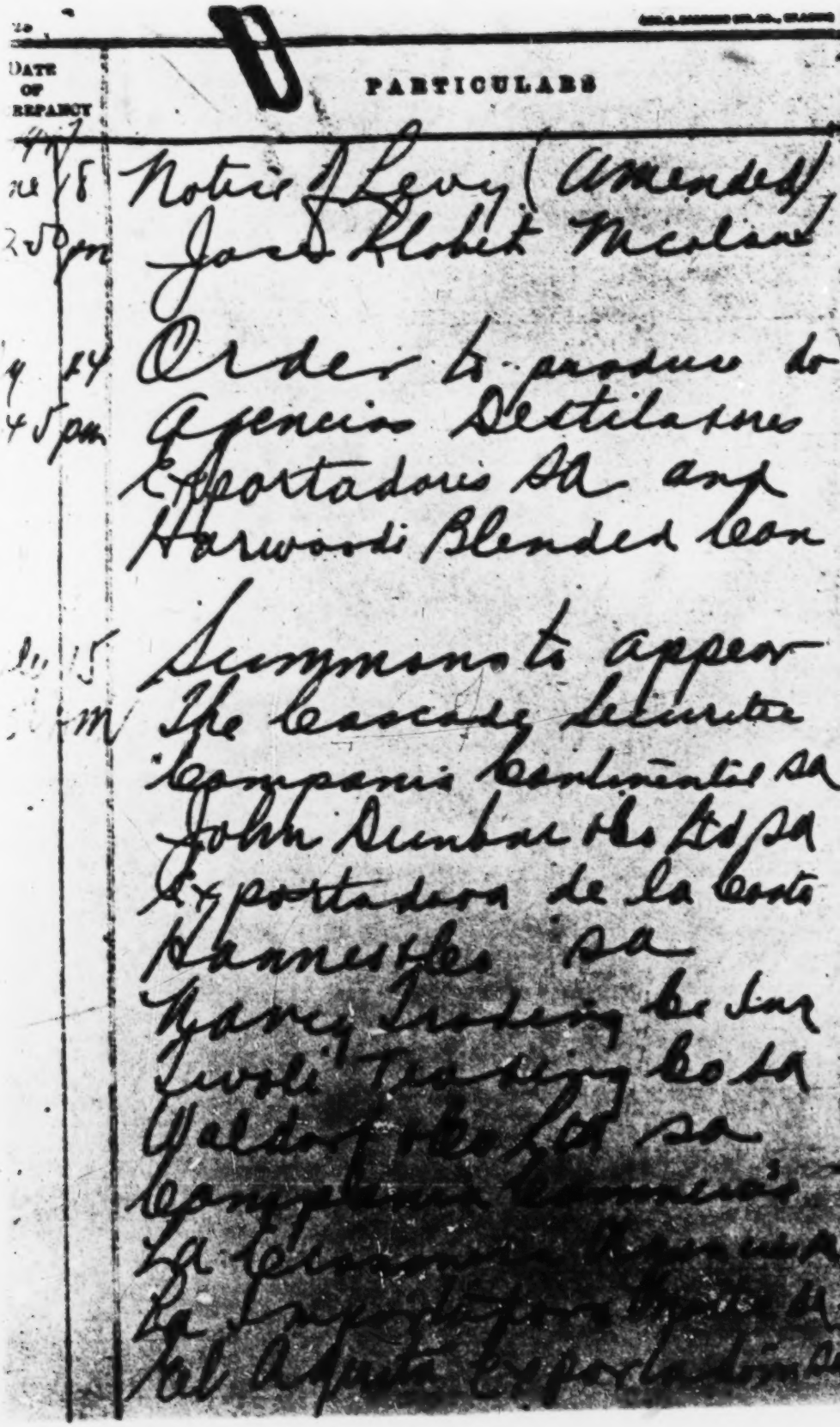
Government Exhibit 407

B 23

Date of Discrepancy	Particulars
Mch 17/47	Subpoena - Dist. Court of USA to E. C. Holohan, Agent, B of C Washington D. C. - Agencias Distilla
June 6/47 4.37 pm	Warrant of Attachment Plaintiffs - U.S. Instituto Intercambio et Defen
June 10 11.55 AM	Notice of Levy: Jose Affects 50 shs Chase Nat
June 10 4.17 pm	Warrant of Attachment against Jose Yurgel - -
June 16 2 P.M.	Summons to appear & Testify etc - Exportadoras SA, Agencias Destilladoras SA Regan Potter & Co Ltd Mr Financiera
June 17 [illegible]	Summons to appear & Testify etc re R.C. Agencias Destilladoras SA, Hymn Regan Potter & Co Ltd SA Fina

PARTICULARS	DATE OF CORRECTING ENTRY	INITIALS
United Distillers, Ltd et al		
- to appear Friday Mch 21 at 10 am		
...es, SA - Compagnia Ramsay Scott Exportadores SA.		
Fred H Paul, Ernest Stein etc		
Argentino De Promocion Del		
dants -		
Llobet Nicolau for $418.28		
Pk stock held in S/K.		
by Menkes Fewer Inc Plaintiff		
Yurgel Bros. $5.202.56		
re R. C. Williams & Co, Inc, Cia Ramsay Scott		
Hyman Harvey Klein, Cameron Stuart & Co Ltd		
Lloyds SA The Seaboard Syndicate SA.		
Williams & Co. Inc, Cia Ramsay Scott Exportadores SA		
Harvey Klein, Cameron Stuart & Co. Ltd		
...rciera Lloyd SA, The Seaboard Syndicate SA		

Government Exhibit 407



DATE OF REPANCY	PARTICULARS
4 7	
ne 18	Notice of Levy (Amended)
2 50 pm	Jose Klobet Nicolau
y 24	Order to produce do
4 5 pm	Agencias Destilatores
	Exportadores SA and
	Harwoods Blended Con
ly 15	Summons to appear
m	The Cascade Securities
	Companies Continental SA
	John Dunbar & Co Ltd SA
	Exportadora de la Costa
	Hannes & Co SA
	Navy Trading Co Inc
	Tivoli Trading Co SA
	Waldorf & Co Ltd SA
	Compañia Comercial
	La Cisneros Agencias
	La Importadora [illegible]
	El Agrita Exportadora SA

PARTICULARS	DATE OF CORRECTING ENTRY	INITIALS
Collector of Internal Revenue 418.28		
...ments etc le accounts of SA – Compagnia Ramsey Scott Correspondence le accounts of ...dian Whiskey —		
to Testify and to Produce Books etc. Co Ltd Parsee Inc		
Ostrow Y. Companies Exportadores		
Explotadora De Inmuebles Y Valores		
SA Exportadores Aliados SA		
Associated Factors SA		
Douglas Ryan Syndicate SA		
Angus Kirby (Panama) Ltd SA		
" " Oles. Exportadores		
...a Ribera SA John Dunbar Rec Ex & Ing Sp		
Ostrow Y Companies Special		
Inversionista Asociados SA		

Government Exhibit 407

R 23

DATE OF DISCREPANCY	PARTICULARS
Aug 27/47 3.30 PM	Order to produce recordak checks drawn on the accou Comp. Ramsay Scott Exportadores account
July 28/47 1.25 PM	Subpoena - for production deposit tickets and authori A Belibe Power & paper Co Ltd - Cancelled cho - month of July 1947 - authorization from Jany [illegible]
Aug 26 3 pm	Subpoena Municipal Court Re William Cohen and Ida Willbrand Candy Cor Jud Haiti Cocoanut Product
Oct 15 12.35 pm	Subpoena - Documents Vice Brothers Sales Corp Corp Resolutions etc - Cheques on hand - (Oct 24/47 -)

PARTICULARS	DATE OF CORRECTING ENTRY	INITIALS

films or print made from all
nts of Agencias Dactiladores, SA and
and all deposit slips of above

of [illegible] sheets, cancelled checks
slips to sign on account of
- Ledger sheets from July 1, 1939 to date
Dep. tickets from July 1, 39 to date

Judgment for Examination 3rd party
Gabb. Co-partners. D/B/A.
gment Creditor against
SA Judgment Debtor for $552.00

relating to the account of
ration - Ledger Sheets July 1, 40 - to-date
Deposit Slips July 1, 40 to-date
Correspondence relating to Loans -

Government Exhibit 408

OPA FORM 2915-1 (Copy)

UNITED STATES OF AMERICA
OFFICE OF PRICE ADMINISTRATION

INSPECTION REQUIREMENT

To: E. C. Holahan, Agent, Royal Bank of Canada, New York City Agency,
68 William Street
New York City, N. Y.

In connection with an investigation to assist the Price Administrator, Office of Price Administration, in the administration and enforcement of the Emergency Price Control Act of 1942, as amended, and especially of the following:

Maximum Price Regulation 445

YOU ARE HEREBY FORTHWITH REQUIRED TO PERMIT Raymond L. Brewster, Carl A. Lobenthal, representatives of the Office of Price Administration to inspect at your place of business the following documents:

(1) All books, records and correspondence pertaining to the accounts of R. C. Williams & Company, Inc., 265 Tenth Avenue, New York, N. Y.
Agencias Destiladores, S. A., Havana, Cuba
Compagnia Ramsey Scott Exportadores, S. A., of Cuba, Havana, Cuba
Financiera Lloyds, S. A.
The Seaboard Syndicate, S. A.

(2) All records of payment and disbursement which appear in the accounts of

Government Exhibit 408

R. C. Williams & Company, Inc., 265 Tenth Avenue, New York, New York
Agencias Destiladores, S. A., Havana, Cuba
Compagnia Ramsey Scott Exportadores, S. A., of Cuba, Havana, Cuba
Financiera Lloyds, S. A.
The Seaboard Syndicate, S. A.

and to permit the aforesaid representatives of the Office of Price Administration to copy all or any part of the said documents, and

YOU ARE FURTHER REQUIRED TO PERMIT the aforesaid representative to examine the following:

now in your possession or under your control.

Issued this 16 day of September, 1946, at New York, N. Y.

JAMES L. MINDY
Regional Price Administrator
Office of Price Administration.

Sections 202(a) and 202(b) of the Emergency Price Control Act of 1942 (Public Law 421—77th Cong., chapter 26—2nd Sess.), as amended, authorize the Price Administrator to make such studies and investigations of price and rent matters as he deems necessary or proper to assist him in prescribing any regulation or order under the Act, or in its administration or enforcement, and to require any person who is engaged in the business of dealing with any commodity, or who rents or offers to rent or acts as broker or agent for the rental of any defense housing accommodations, to permit the inspection and copying of records and other documents, the Inspection of Inventories, and the Inspection of such housing accommodations. Under Section 4(a) of the Act, wilful refusal to obey this Inspection requirement is a violation of the law, and under Section 205(b) any person guilty of such violation will be liable to a fine of not more than $5,000, or to imprisonment for not more than one year, or both. Under Section 205(a) such violation may also cause the issuance of a court order, the disobediance of which will render a violator subject to punishment for contempt of court.

Government Exhibit 408

RETURN OF SERVICE

I certify that a duplicate original of the within Inspection Requirement was duly served*

☐ on the person named therein.

☐ by leaving the said original at the principal office or place of business of the person named therein, to wit, at:

.....

on the day of , 194

.....
(Person making service)

.....
(Title)

*Check method used.

OPA Form 2915-1 BACK

1-3752-bu-ap

[redacted]

[redacted]

[redacted]

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Defendant Klein Exhibit E

145-A-4

May 8th, 1944.

R. C. Williams & Co., Inc.,
265 Tenth Avenue,
New York, New York City,
U. S. A.

Gentlemen:

Please find enclosed herewith, the following documents:

1. Your copy of the memorandum made between our client, "AGENCIAS DESTILADORAS, A. A." and yourself the 18th of April 1944.
2. Your copy of the supplemental agreement between our client and yourself conveniently approved and accepted by our client.

You will notice perhaps that the memorandum has been executed without affixing the Corporate Seal. According to Cuban laws the Corporation has no Seal, therefore, there is no Seal required.

Hoping that you find everything satisfactory, we remain,

Yours very truly,

ZAYAS, MORAN Y VALDES RODRIGUEZ

EC/hg

Enrique de Cubas

Enclosures—2

Defendant Klein Exhibit F

Cuban All America Cables

ANTES

Commercial Cable Co. of Cuba

11058 B

INDIQUESE CON UNA "X" LA CLASE DE SERVICIO DESEADO

ORDINARIO A TARIFA INTEGRA		ORDINARIO EN CLAVE (CDE)	
URGENTE	X	URGENTE EN CLAVE (CDE)	
DIFERIDO		CARTA TELEGRAMA NOCTURNA	

SIN INDICACION AL CONTRARIO ESTE MENSAJE SE TRANSMITIRA COMO MENSAJE ORDINARIO

All America Cables — Cuban — Commercial Cables

Postal Telegraph — Mackay Radio

THE INTERNATIONAL SYSTEM

NO. 21
M M
HORA
PALABRAS
TASA

CUBA 226 ESQ. A O'REILLY - HABANA

TELEFONOS: M-9801 - M-9808

SIRVASE TRANSMITIR EL SIGUIENTE TELEGRAMA, DE CONFORMIDAD CON LAS CONDICIONES AL DORSO, A LAS CUALES CONSIENTO SOMETERME

MAY 8, 1944

DEFENDANT'S EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

R.C. WILLIAMS & CO.
265 TENTH AVENUE
NEW YORK CITY

YOUR AGREEMENT WITH US FOR DISTRIBUTION OF HARWOOD CANADIAN WHISKEY IN UNITED STATES OF AMERICA ACCEPTED stop SIGNED AGREEMENT FOLLOWS BY VIA AIRMAIL

AGENCIAS DESTILADORAS

Firma del remitente Zayas, Morán y Valdes Rodrigues Domicilio Aguiar 411, Habana.

OFICINA PRINCIPAL ABIERTA TODA LA NOCHE

Defendant Klein Exhibit F 1

Sender's copy of cable dated May 8, 1944 from Agencias
R. C. Williams accepting Agencias-R. C. Williams
ontract.

Cuban All America Cables

ANTES

Commercial Cable Co. of Cuba

11057-B

Defendant Klein Exhibit G

441

INDIQUESE CON UNA "X" LA CLASE DE SERVICIO DESEADO

ORDINARIO A TARIFA INTEGRA		ORDINARIO EN CLAVE (CDE)	
URGENTE		URGENTE EN CLAVE (CDE)	
DIFERIDO		CARTA TELEGRAMA NOCTURNA	

SIN INDICACION AL CONTRARIO ESTE MENSAJE SE TRANSMITIRA COMO MENSAJE ORDINARIO

CUBA 226 ESQ. A O'REILLY - HABANA

All America Cables · Cuban All America Cables · Commercial Cables · Postal Telegraph · Mackay Radio

THE INTERNATIONAL SYSTEM

NO.
M M
HORA
PALABRAS
TASA

TELEFONOS: M-9801 - M-9805

SIRVASE TRANSMITIR EL SIGUIENTE TELEGRAMA, DE CONFORMIDAD CON LAS CONDICIONES AL DORSO, A LAS CUALES CONSIENTO SOMETERME

DEFENDANT'S EXHIBIT U. S. Dist. Court S. D. of N. Y.

MAY 8, 1944

R.C. WILLIAMS & CO.
265 TENTH AVENUE
NEW YORK CITY

YOUR ORDER X APRIL TWENTY OF NINETEEN FOURTYFOUR FOR ONE HUNDRED THOUSAND CASES HARWOODS CANADIAN WHISKEY ACCEPTED stop WRITTEN CONFIRMATION OF THIS ACCEPTANCE FOLLOWS VIA AIRMAIL

AGENCIAS DESTILADORAS

OFICINA PRINCIPAL ABIERTA TODA LA NOCHE

Firma del remitente Zayas, Korán y Valdes Rodriguez Domicilio Aguiar No. 411

Defendant Klein Exhibit G 1

Sender's copy of cable dated May 8, 1944 from Agencias to R. C. Williams accepting first order for 100,000 cases of Harwood's Canadian Whiskey.

Defendant Klein Exhibit H

145-A-4

May 10th, 1944

R. C. Williams & Co., Inc.,
265 Tenth Avenue,
New York, New York City.
U. S. A.

Gentlemen:

Confirming our cable to you we are pleased to acknowledge your order for one hundred thousand (100,000) cases of HARWOOD'S CANADIAN WHISKEY for which please accept our thanks.

We desire to assure you of our cooperation in connection with our mutual understanding for the disposition of our products in the United States, and we hope this connection will be of long-standing.

Yours very truly,

AGENCIAS DESTILADORAS, S. A.

Enrique de Cubas
Assistant Secretary

ER:hgz

Defendant Klein Exhibit J

AGENCIAS DESTILADORAS, S. A.
AGUIAR 411, 5o. PISO
TELEFONO M-5687
LA HABANA

January 2, 1946

. C. Williams & Co. Inc.
65 -10th Avenue,
New York City, N.Y. U.S.A.

Attention: Mr. I. A. Koerner,
Manager, Liquor Division

Dear Sir:

Supplementing our letter of December 28th, 1945 to you regarding our assignment of contract had with you covering Harwood's Blended Canadian Whisky, we hereby request and authorize you

1—To amend any and all letters of credit issued or to be issued in our favor pursuant to said agreement by adding thereto as beneficiary "and/or Cia Ramsey, Scott Exportadores, S.A."

2—To make payment to said Cia. Ramsey, Scott Exportadores, S.A. for any merchandise covered by documents in our name received by The Chase National Bank of the City of New York on or after January 16th, 1946.

Very truly yours,

AGENCIAS DESTILADORAS, S.A.

BY: (Illegible)
Vice-President

FG/hgz

Defendant Klein Exhibit K

ESTABLISHED 1811

R. C. WILLIAMS & CO., INC.
Wine & Spirit Importers
Domestic Wine & Liquor Merchants

CABLE ADDRESS
RECRECER

TELEPHONE
CHICKERING 4-1100

10TH AVENUE 25TH TO 26TH STS.

NEW YORK

N. Y. State Wholesale License L. L. No. 1

January 8th, 1946.

Cia. Ramsey, Scott Exportadores, S. A.
(Ramsey, Scott Co. Exporters, Inc.)
Aguiar 411, 50 Piso,
Habana, Cuba.

Gentlemen:-

We are pleased to acknowledge your letter of December 29th relative to your having taken over, by transfer and assignment to you, the contract existing between us and the Agencias Destiladoras, S. A. of Havana, Cuba for the sale of Harwood's Blended Canadian Whiskey.

We are pleased to acknowledge the same and can assure you we will do everything to cooperate with you in the distribution of this brand and in all respects to make the arrangement between us a mutually profitable one.

We agree to reestablish our letter of credit with you in the same manner as heretofore existing between us and the Agencias Destiladoras, S. A. Said letter of credit to become effective January 15, 1946. If, after said date, documents

continue to arrive for the account of Agencias Destiladoras, S. A. we will arrange so that your Company will be the beneficiary of same, as if they were originally made in your name. We understand, of course, it may take a week before new billing in your favor starts coming in.

Very truly yours,

R. C. WILLIAMS & Co. INC.

I. A. KOERNER
I. A. Koerner.
Manager—Liquor Department.

IAK:SR

TELEPHONE
CHICKERING 4-1100

R.C.WILLIAMS & CO.,INC.

Since 1811

IMPORTERS · EXPORTERS · MANUFACTURERS · COFFEE ROASTERS
TENTH AVENUE · 25TH TO 26TH STREET · NEW YORK, N.Y.

CABLE ADDRESS
RECRECER

April 18, 1944

Agencias Distiladores, S. A.
411 Aguiar Street
Havana, Cuba

Gentlemen:

Supplementing the agreement between us made the day of April, 1944 and it being the desire of the parties that the merchandise be marketed through the proper channels and in the proper manner in order to establish the business on a sound financial basis, it is further agreed as follows:

1. Out of the profit of $1.60 per case as provided for in the agreement, the Agent agrees that it will pay a brokerage or selling commission of not in excess of 60¢ per case to brokers or selling agents selected by it but no such broker or selling agent will be selected by the Agent unless and until the written approval of the Supplier is first obtained as to each such broker or selling agent.

2. The Agent will make no sales to wholesalers in monopoly states without first having received written approval of the Supplier. The Supplier shall have the refusal of the customer or the quantity sold by the Agent to any wholesaler or monopoly state.

3. After the Agent has accepted and paid for its own account for sales to retailers for 12,500 cases or 12½% of the total of all shipments by the Supplier or its Principal, whichever is greater, then and in such event the Agent shall not be required to accept any further shipments. On all sales in excess of the above 12,500 cases or 12½%, whichever is greater, Agent shall not be compelled to pay for same unless and until the Agent shall have received from its customer a sight letter of credit irrevocable for 90 days in favor of the Agent. The Supplier or its Principal is to make shipment of any goods so sold to Agent's wholesale customers on open

TELEPHONE CHICKERING 4-1100

R. C. WILLIAMS & CO., INC.

Since 1811

IMPORTERS · EXPORTERS · MANUFACTURERS · COFFEE ROASTERS
TENTH AVENUE · 25TH TO 26TH STREET · NEW YORK, N.Y.

CABLE ADDRESS RECRECER

credit to Agent by forwarding the documents provided for in the agreement and with three (3) days sight draft to the bank and payment thereof is to be made by the Agent to the bank in accordance with such sight draft.

Will you please sign the duplicate original of this letter where indicated and return to us.

Very truly yours,

R. C. WILLIAMS & COMPANY, INC.

BY:

The above is approved and accepted.

AGENCIAS DISTILADORES, S. A.

BY:_____

JULES JACOBS
ATTORNEY AND COUNSELOR AT LAW
11 WEST 42ND STREET
NEW YORK - 18
WISCONSIN 7-9200

April 13, 1944

Morris O. Alprin, Esq.
420 Lexington Avenue
New York City

Dear Morris,

I enclose herewith proposed form of letter which is to supplement the agreement. Will you please advise me with reference to same.

Will you please forward to me draft of the agreement which you have drawn so that I may go over the same.

With kindest regards, I am

Sincerely,

JJ:SK
Enc.

Defendant Alprin Exhibit T

to the account of Greater N.Y.Wholesale Liquor Dealer- Assn. $

SERVICE DESIRED
CABLE
ORDINARY
URGENT RATE
DEFERRED
NIGHT LETTER
SHIP RADIOGRAM

WESTERN UNION

1206-B

CHECK
ACCOUNTING INFORMATION
TIME FILED

A. N. WILLIAMS, PRESIDENT
NEWCOMB CARLTON, CHAIRMAN OF THE BOARD
J. C. WILLEVER, FIRST VICE-PRESIDENT

following telegram, subject to the terms on back hereof, which are hereby agreed to

March 31, 1944.

WANT A REPLY?
"Answer by WESTERN UNION" or similar phrases may be included without charge.

Mr. H. M. Klein
United Distillers (of America)Ltd.
2700 Wilmarco Avenue
Baltimore, Md.

APPOINTMENT MONDAY TWO PM JABURG KOERNER SATISFACTORY. SUGGEST YOU MEET ME AT MY OFFICE BEFORE APPOINTMENT SO THAT WE CAN GO OVER MATTER TOGETHER AND DISCUSS ALL TERMS OF CONTRACT BEFORE CONFERENCE. IF SATISFACTORY PLEASE ADVISE

Duncan Harwood

Morris Alprin

D C,S 3

Defendant Klein Exhibit AI

ESTABLISHED 1811

CABLE ADDRESS
RECRECER

TELEPHONE
CHICKERING 4 1100

R. C. WILLIAMS & CO., INC.
Wine & Spirit Importers
Domestic Wine & Liquor Merchants
10TH AVENUE 25TH TO 26TH STS.
NEW YORK

N. Y. State Wholesale License L. L. No. 1

January 17, 1946

Cia Ramsey, Scott Exportadoras, S.A.
411 Aguiar Street
Havana. Cuba

Gentlemen:

We are enclosing herewith our letter of credit, #37409, issued through the Chase National Bank, New York, New York, in your favor, in the amount of $200,000.00, which will cover approximately 10,000 cases 12 4/5 quarts Harwood's Blended Canadian Whiskey, 90.4 proof, @ $19.05 per case, F.O.B. Vancouver.

Inasmuch as we have established the credit for the shipments of 4/5 quarts only, we stand ready to amend this credit to include pints just as soon as we receive word from you that you are in a position to bottle same.

Very truly yours,

R. C. WILLIAMS & CO. INC.

N. SALVATORE
N. Salvatore

NS:RS
Enc.

Defendant Klein Exhibit AI

THE CHASE NATIONAL BANK

OF THE CITY OF NEW YORK

IRREVOCABLE
COMMERCIAL
LETTER OF CREDIT

Cable Address
Chasebank, New York

PINE STREET CORNER OF NASSAU

New York 15, N. Y.

. . . $200,000.00 U.S.Cy. .

No. 37409 January 15, 1946

Cia Ramsey, Scott Exportadores, S.A.,
411 Aguiar Street,
Havana, Cuba.

Gentlemen:

We hereby authorize you to draw on The Chase National Bank, New York,N.Y.

By order of The Chase National Bank,

Importers and Traders Branch, New York, N.Y.

And for account of R.C.Williams & Co.Inc.

Up to an aggregate amount of Two Hundred Thousand Dollars U.S. Currency . . .

Available by your drafts at Seven (7) Days Sight, in duplicate, for full invoice value . . .

Accompanied by: Commercial Invoice in triplicate

Consular Invoice in duplicate
Railroad Bill of Lading in triplicate

issued to order of The Chase National Bank, New York marked Notify R.C.Williams & Co. Inc., 265 Tenth Avenue, New York 1,N.Y.

evidencing shipment of 10,000 cases 12/4/5 quarts Harwood's Blended Canadian Whiskey, 90.4 Proof at $19.05 per case F.O.B. Vancouver from Vancouver, B.C. to New York and other points in the U.S.A.

Insurance covered by buyers.

Drafts must be drawn and negotiated not later than February 28, 1946. Each draft must state that it is "drawn under Letter of Credit of The Chase National Bank, New York, No. 37409 dated January 15, 1946", and the amount endorsed on this Letter of Credit.

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this credit, that such drafts will be duly honored upon presentation to the drawee.

Yours very truly,

. . . . . .

Second Vice President
Assistant Cashier

. . . . . .

Assistant Manager, Foreign Department

AS:B
F. X. 336A 4-45

NON-NEGOTIABLE COPY

CREDIT MEMORANDUM

AGENCIAS DESTILADORAS S. A.

AGUIAR 411 TELEFONO M-5687

HABANA, CUBA

FACTURA DE MERCANCIAS

Factura de December 12, 1945

Comprada a AGENCIAS DESTILADORAS, S.A. (VENDEDOR) HABANA, CUBA. (DIRECCION)

Por R. C. WILLIAMS & CO. INC. 265 - Tenth Avenue, New York City, N.Y. U.S.A.
(COMPRADOR O CONSIGNATARIO) (DIRECCION)

De acuerdo con orden aceptada (FECHA)

Por cuenta de R. C. WILLIAMS & CO. INC. (NOMBRE) (DIRECCION)

Para embarcar por (TRANSPORTADOR)

Marcas y números en los envases	Número o símbolo del fabricante o vendedor	Cantidades y descripción general de las mercancías	Precio por unidad	Total de Factura
		CREDIT MEMORANDUM		
		CHARGES SHOWN ON YOUR INVOICE NO. L-172 ATTACHED TO		
		YOUR LETTER OF DECEMBER 11, 1945.		$ 1,801.60 U.S. Funds

CREDIT

DEFENDANTS EXHIBIT AN
U. S. Dist. Court
S. D. of N. Y.

Defendant Klein Exhibit AN

CREDIT MEMORANDUM

AGENCIAS DESTILADORAS S. A.

AGUIAR 411 TELEFONO M-5687

HABANA, CUBA

1105 E-1

FACTURA DE MERCANCIAS

Factura de December 18, 1945

Comprada a AGENCIAS DESTILADORAS, S. A. (VENDEDOR) HABANA, CUBA (DIRECCION)

Por R. C. WILLIAMS & CO. INC. 265 - 10th Avenue, New York City, New York (COMPRADOR O CONSIGNATARIO) (DIRECCION)

De acuerdo con orden aceptada (FECHA)

Por cuenta de R. C. WILLIAMS & CO. INC. (NOMBRE) (DIRECCION)

Para embarcar por (TRANSPORTADOR)

Marcas y números en los envases	Número o símbolo del fabricante o vendedor	Cantidades y descripción general de las mercancías	Precio por unidad	Total de Factura
		CREDIT MEMORANDUM		
		CHARGES SHOWN ON YOUR INVOICE NO. L-185 ATTACHED TO YOUR LETTER OF DECEMBER 17, 1945.		$1,562.73

DEFENDANT

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

Defendant Klein Exhibit AN

[redacted]

[redacted]	Price per [redacted]	Total [redacted]
[redacted]		
[redacted]		
[redacted]	

[illegible]

AGENCIAS DESTILADORAS S. A.

AGUIAR 411 TELEFONO [illegible]

HABANA, CUBA

FACTURA DE MERCANCIAS

Factura de December 3, 19[illegible]

Comprada a [illegible]

Por [illegible]

De acuerdo con orden aceptada

Por [illegible]

Para [illegible]

[illegible]	[illegible]	[illegible]
		[illegible]
	[illegible]	
	[illegible]	

[redacted]

AGENCIAS DESTI[redacted]

AGUIAR 411

HABANA, [redacted]

FACTURA DE MERCA[redacted]

Factura de November 27, 1946

Comprada á AGENCIAS DESTILADORAS S.A.

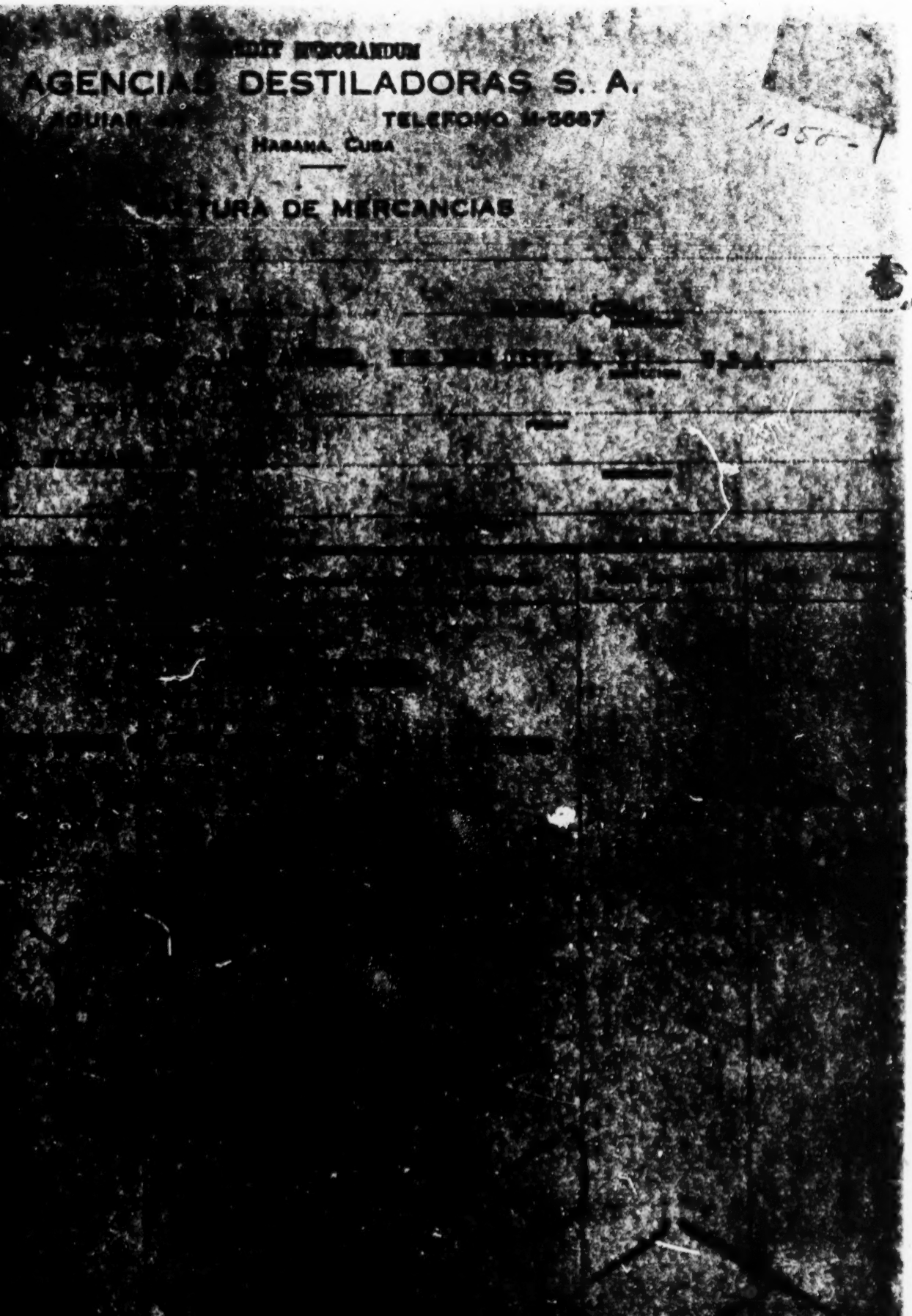
Por E. S. WILLIAMS & CO. INC. [redacted]

De acuerdo con ordenes aceptadas [redacted]

Por cuenta de E. S. WILLIAMS & CO. [redacted]

Para entregar por [redacted]

[redacted]	[redacted]



Defendant Klein Exhibit AN

CREDIT MEMORANDUM

AGENCIAS DESTILADORAS S. A.

AGUIAR 411 TELEFONO M-5687

HABANA, CUBA

1145-1

FACTURA DE MERCANCIAS

Factura de November 17, 1945

Comprada a AGENCIAS DESTILADORAS, S.A. (VENDEDOR) HABANA, CUBA. (DIRECCION)

Por R. C. WILLIAMS & CO. INC. 265 - 10th Avenue, New York City, N.Y. U.S.A. (COMPRADOR O CONSIGNATARIO / DIRECCION)

De acuerdo con orden aceptada (FECHA)

Por cuenta de R. C. WILLIAMS & CO. INC. (NOMBRE / DIRECCION)

Para embarcar por (TRANSPORTADOR)

Marcas y números en los envases	Número o símbolo del fabricante o vendedor	Cantidades y descripción general de las mercancías	Precio por unidad	Total de Factura
		CREDIT MEMORANDUM		
		Merchandise short in Car No. 135234 consigned to Rainier Distributing Company, San Francisco, California.		$ 103.86 U.S.Funds

Defendant Klein Exhibit AN

CREDIT MEMORANDUM

AGENCIAS DESTILADORAS S. A.

AGUIAR 411 TELEFONO M-5687

HABANA, CUBA

FACTURA DE MERCANCIAS

Factura de November 17, 1945

Comprada a AGENCIAS DESTILADORAS, S.A. (VENDEDOR) HABANA, CUBA. (DIRECCION)

Por R. C. WILLIAMS & CO. INC. 265 -10th Avenue, New York City, N.Y. U.S.A. (COMPRADOR O CONSIGNATARIO) (DIRECCION)

De acuerdo con orden aceptada (FECHA)

Por cuenta de R. C. WILLIAMS & CO. INC. (NOMBRE) Car No. SP 34428 (DIRECCION)

Para embarcar por UNION PACIFIC RR (TRANSPORTADOR)

Marcas y números en los envases	Número o símbolo del fabricante o vendedor	Cantidades y descripción general de las mercancías	Precio por unidad	Total de Factura
		CREDIT MEMORANDUM		
1250 c/s	12/4/5 Qts.	HARWOOD'S BLENDED CANADIAN WHISKY 90.4 U.S.Proof	$19.05 per c/s In Bond F.O.B. LOS Angeles, Calif.	$23,812.50 U.S.Funds

Merchandise returned to Vancouver, B. C. Canada.
1250 c/s originally shipped in Car No. RDG 101458
to Glen L. Clark & Co. Los Angeles, California.

Defendant Klein Exhibit AN

402

--- I, ENRIQUE DE CURAS Y MELENDEZ, Acting Secretary of "CLAYTON & CHILDS EXPORTERS, INC.", in Spanish, "CLAYTON Y CHILDS - EXPORTADORES, S.A.", a corporation organized and existing under the laws of the Republic of Cuba,----------

--- HEREBY CERTIFY:- That the following is a true and substantial translation of the Deed of Incorporation and By-Laws of - said Company:----------

----------NUMBER NINE HUNDRED AND NINE.----------

---------- ACT OF INCORPORATION.----------

--- IN THE CITY OF HAVANA, on the twenty-third day of August,- one thousand nine hundred forty three.----------

--- BEFORE ME:- Dr. ISAAC C. MIRO Y CARONGE, Attorney-at-Law,- and Notary Public of the District and Bar of this City, and - domiciled at same, appear:----------

--- Dr. FRANCISCO GURRI Y GARRIDO, born in Havana, a Cuban citizen, of legal age, single, Attorney-at-Law and resident of - this City at four hundred and eleven Aguiar street.----------

--- Dr. RICARDO MORAN Y CASTRO, born in Guanabacoa, a Cuban citizen, of legal age, married, Attorney-at-Law and a resident- of this City at four hundred and eleven Aguiar street.--------

--- And Dr. MANUEL VEGA PENICHET, born in Matanzas, a Cuban citizen, of legal age, married, Attorney-at-Law and resident of this City at four hundred and eleven Aguiar street.----------

--- The appearers declare to be in full exercise of their civil rights, and having, in my judgement, the necessary legal - capacity for this execution, nothing to the contrary being - known to me, they declare:----------

--- FIRST:- That they have agreed to constitute and by these - presents do constitute a Stock Company, to be ruled by the following,----------

---------- BY LAWS.----------

---------- NAME OF THE COMPANY.----------

--- ARTICLE FIRST.- This Company, constituted under the Laws of the Republic of Cuba, is named "CLAYTON & CHILDS, EXPORTADORES, S.A.", in english "CLAYTON & CHILDS, EXPORTERS, INC.".

----------CORPORATE DOMICILE.----------

--- ARTICLE SECOND.- The Company shall have its domicile in the City of Havana at number four hundred and eleven Aguiar-street.- The corporate domicile may be transferred to any - other location within the territory of the Republic of Cuba, by Resolution of the Board of Directors.- The Board of Directors may also at any time establish offices and branches, within or outside the Republic of Cuba.----------

----------CORPORATE OBJECTS.----------

--- ARTICLE THIRD.- The Company shall dedicate itself to:---
--- a).- Perform all kinds of business as Agents, Brokers, - Importers and Exporters of all kinds of products, whatever - being its nature.----------
--- b).- Perform, without any limitation or restriction, any and all other lawful business undertakings which the Board - of Directors may deem necessary or advisable.----------
--- c).- Perform all acts, have and exercise all rights, and assume and discharge all obligations which any corporation - organised under the Cuban laws, may respectively perform, - have, exercise, assume or discharge.----------

---------- CORPORATE CAPITAL.----------

--- The authorised capital of this Company is FIVE THOUSAND DOLLARS, Official Currency, represented by fifty shares of a --- value of one hundred dollars each.----------

SHARES.

--- ARTICLE FIFTH.- Shares will either be registered or - bearer, to the election of each shareholder.- Shares shall be fully paid and represented by certificates taken from - the corresponding shares stub book.- In each certificate - the number of shares represented by same shall be stated.- --- These shares are non-assessable and are indivisible as- regards the Company.- In case of joint ownership all those interested shall be represented before the Company by a sig gle representative or depositary, who shall exercise what- ever rights he may be entitled to.----------
--- The certificates of shares shall be signed by both the President and the Secretary of the Company, or by their - substitutes according to the By-Laws of the Company.-----
--- Registered shares shall be recorded in the Register - Book that the Company will keep for that purpose.---------

DURATION.

--- ARTICLE SIXTH.- The Company is constituted for an indg finite period of time.----------

FISCALLYEAR.

--- ARTICLE SEVENTH.- The fiscal year shall begin the first day of January and shall terminate the thirty first day of December.- The first fiscal year shall begun as of this - date and shall end on December thirty first, one thousand- nine hundred and forty four.----------

GENERAL MEETING OF SHAREHOLDERS.

--- ARTICLE EIGHTH.- The shareholders may hold both regular and special general meetings.----------
--- The regular meetings of shareholders shall be held dur- ing the first ten days of the month of January of each year, at the place, date and time designated by the acting Presi-

dent of the Company, with the purpose of approving the annual balance, elect the Board of Directors, as well as to - take up such other matters of interest to the Company submitted for its consideration.----------

--- Special general meetings of shareholders shall be held at any time, on convocation by the acting President and upon request of any one Director or, by shareholders representing twenty five per centum of the outstanding capital.--------

--- Citations for both, regular and special meetings of - shareholders shall express the purpose, place, date and hour of the meeting, and shall be published once in an important newspaper of the City of Havana, at least with twenty days of anticipation to the date of the meeting.----------

--- Either ordinary or special meetings of shareholders may be held outside the territory of the Republic of Cuba.-----

--- No notice is required when the total of shares issued - and outstanding be represented at the meeting, or when the shareholders shall have waived in writing their right to receive a notice for one or more meetings; or, whenever they shall be present in person or represented by proxy.------

---------- QUORUM.----------

--- ARTICLE NINTH:- A quorum for a general meeting of shareholders consist of more than one half of the issued and - outstanding shares.----------

--- Resolution shall be adopted at either ordinary or special meetings, by a majority of the votes of those present, except in the cases provided for by Article Twenty second - of these By-Laws, and once passed shall be binding on all - shareholders, whether or not present at the meeting.-------

----------GOVERNMENT AND MANAGEMENT.----------

--- ARTICLE TENTH.- The government, management and adminis-

tration of the corporate affairs, shall be in charge of the Board of Directors, with the powers which shall be specified hereinafter.----------

---------- BOARD OF DIRECTORS.----------

--- ARTICLE ELEVENTH.- The Board of Directors shall consist of not less than two, nor more than five Directors.-------

----------ELECTION OF THE BOARD OF DIRECTORS.----------

--- ARTICLE TWELFTH.- The persons who are to form the Board of Directors shall be elected annually at the regular general meeting of shareholders.- In order to hold the office of Director it shall not be necessary to be a shareholder of the Company.----------

--- The Board of Directors shall be elected for a period of time of one year, but shall continue in office and shall be understood to be legally qualified until their successors shall have been elected and shall have taken charge.-------

--- At a special general meeting of shareholders, duly convoked for the purpose, all or part of the Directors of the Company may be removed from office by the secret vote of two thirds of the issued and outstanding shares.----------

--- The office of Director shall vacate, besides, in case of resignation, death, lunacy, civil disqualification, bankruptcy or insolvency of the Director.- Vacancies occurring among the members of the Board of Directors of the Company shall be filled by the remaining members of the Board of Directors until such time as a general meeting of shareholders shall decide what is to be done.----------

---------- MEETING OF THE BOARD OF DIRECTORS.-------

--- ARTICLE THIRTEENTH.- The Board of Directors shall hold a regular meeting once a year, without the necessity of a

previous citation, immediately after the general meeting of shareholders, or as soon as may be possible, to take up the matters which may be duly submitted.----------

--- The Board shall hold special meetings whenever convoked by the Secretary in pursuance of instructions from the acting President.----------

--- Citations for special meetings of the Board of Directors shall be sent by post, at least four days in advance, addressed to the last known domicile.----------

--- This notice shall not be necessary when all the members of the Board of Directors be present or when they shall waive this right in writing or by cable.- Meetings of the Board of Directors may be held within or outside the Republic of - Cuba, and the Directors may be present in person or through representation by any person holding written appointment to that effect.----------

--- The majority of the Directors shall constitute a quorum, and the resolutions shall be adopted by a majority vote of those present.----------

---------- POWERS OF THE BOARD OF DIRECTORS.----------

--- ARTICLE FOURTEENTH.- The Board of Directors shall have- all the powers assigned by the Code of Commerce and by these By-Laws, and such others as may be conferred by the general- meeting of shareholders and, specially,----------

--- a) To elect and remove freely the functionaries of the - Company, and to fix the corresponding retribution.----------

--- b) To transfer the corporate domicile to any place within the territory of the Republic of Cuba and to open, maintain and close branches and agencies, within or outside the Republic of Cuba.----------

--- c) To direct, effect, manage and perform all the proper [illegible] negotiations and commercial operations of a lawful na-

ture which the Company may legally conduct and transact with in or outside the Republic of Cuba.----------

--- d) To execute powers of attorney, for the representation of the Company, before the Government, the Provinces, the Municipalities and the Judicial Courts of the Republic of Cuba and abroad with any and all faculties.----------

--- e) To perform any other act specially reserved in these By-Laws or in the Cuban Laws to the General Meeting of Shareholders.----------

--- f) To delegate any and all of these faculties, temporarily or permanently, on any person whether a stockholder, director, manager, officer of the Company or any other person not connected with the Company.----------

----------OFFICERS OF THE COMPANY.----------

--- ARTICLE FIFTEENTH.- The Board of Directors shall appoint the officers of the Company, which shall be:----------

--- President.----------

--- Vice-President.----------

--- Treasurer.----------

--- Assistant-Treasurer.----------

--- Secretary.----------

--- First Assistant-Secretary.----------

--- Second Assistant-Secretary.----------

--- The Officers shall hold office for one year but shall remain in charge until their successors shall have been elected and shall have taken office.----------

--- In order to be an officer it is not necessary to be a Director nor a shareholder.----------

--- A single individual may simultaneously hold more than one office.----------

---------- THE PRESIDENT.----------

--- ARTICLE SIXTEENTH.- The President of the Company shall be the Chief Executive and legal representative of same, and - shall have the following power and duties:----------

--- a) To Preside over all the meetings of the shareholders,- and the Board of Directors.----------

--- b) To execute and enforce the resolutions adopted by the general meetings of shareholders and the Board of Directors.-

--- c) To execute all the agreements which the Company may re solve to make and to subscribe together with the Secretary - the certificates of shares.----------

--- d) To exercise the full representation of the Company ju- dicially and extrajudicially, before all classes of indivi- duals, persons, authorities, corporate bodies, offices, Courts and Tribunals, the State, the Provinces and the Municipalities, exercising the rights and actions pertaining to the Company, defending the Company in all legal actions, that may be exer- cised against it; and executing powers of attorney for law- suits, it being sufficient as regard third parties, that he prove his position as acting President of the Company by a certificate issued by the Secretary for the purpose of repre- senting the Company in lawsuits or elsewhere.----------

--- e) To appoint and discharge the employees of the Company and to fix their retribution.----------

--- f) To perform all other duties and obligations which may be conferred upon him from time to time by the Board of Di- rectors.----------

---------- THE VICE-PRESIDENT.----------

--- ARTICLE SEVENTEENTH.- The Vice-President shall attend - to all the duties and have all the powers of the President whenever the latter shall be unable to exercise them for - any reason.----------

--- The Vice-President shall also perfom the duties and have the powers which the Board of Directors may specially confer upon him.----------

---------- THE TREASURER.----------

--- ARTICLE EIGHTEENTH.- The Treasurer shall have the following duties and powers:----------

--- a) To keep the accounts of the Company, drawing up the - balances, inventories, and liquidations which may be proper.

--- b) To sign by himself all checks, drafts, bills of exchange, promissory notes, pignorations, vouchers, loans, - bonds, obligations and other documents representing liabilities of the Company.----------

--- c) To make collections and payments, and to open and - maintain current accounts in banks, societies and credit - institutions, depositing and withdrawing the funds therefrom, by himself.----------

--- d) To render an annual report to the Board of Directors and to the general meeting of shareholders.----------

--- e) To exercise all the other powers and functions which may be conferred upon him by the Board of Directors.-------

---------- THE ASSISTANT-TREASURER.----------

--- ARTICLE NINETEENTH.- The Assistant-Treasurer shall attend to all the duties and have the powers of the Treasurer when the latter is unable to exercise them for any reason.----------

--- He shall also exercise all the duties and powers which may be specially conferred upon him by the Board of Directors.----------

---------- THE SECRETARY.----------

--- ARTICLE TWENTIETH.- The Secretary of the Company shall

have the following duties and powers:----------

--- a) To attend all meetings of the shareholders and of the Board of Directors, drawing up, entering and signing the corresponding minutes in the books destined for that purpose,- and to record in the minute books those minutes corresponding to the meetings held by the General Stockholders Meeting or by the Board of Directors outside of the Republic of Cuba, whether or not he has been present at the meeting, translating same when necessary, such records being full evidence of the resolutions, acts or deeds which are set forth therein.-

--- b) To receive and transmit all citations and notices to- and from the Company.----------

--- c).To sign, together with the President, the certificates of shares.----------

--- d) To keep and make the entries in the stub books and registers of shares.----------

--- e) To make translations and issue certifications of the By-Laws of the Company, of the books in his charge, of facts relative to the Company as well as of the appointment and functions of the Directors and Officers of the Company.----

--- f) To perform all the other duties and have the powers the Board of Directors may confer upon him.----------

---------- THE ASSISTANT-SECRETARIES.----------

--- ARTICLE TWENTY FIRST.- The Assistant-Secretaries shall- perform all the duties and have the powers of the Secretary whenever the latter cannot do so for any reason.---------

----------AMENDMENT OF THE BY-LAWS.----------

--- ARTICLE TWENTY SECOND.- These By-Laws may be amended in whole or in part by resolution of the general meeting of - shareholders, adopted at a special meeting convoked for such purpose, at which must be present at least two thirds of t[illegible]

shareholders, holders of two thirds of the issued and outstanding shares.----------

--- The resolution must be adopted by the affirmative vote of two thirds of the issued and outstanding shares.----------

--- The same requirements shall be necessary to:----------

--- a) Increase or reduce the corporate capital.----------

--- b) Declare the Company in bankruptcy.----------

--- c) Merge or consolidate the Company with other enterprises.----------

--- d) Dissolve the Company.----------

----------DISSOLUTION AND AMENDMENT OF THE COMPANY.----------

--- ARTICLE TWENTY THIRD.- When the dissolution of the Company be resolved, in the form provided for in the preceding article, liquidation thereof shall be proceeded with for - which purpose the general meeting of shareholders, on adopting the resolution, shall appoint the liquidator or liquidators necessary for the purpose, who shall have thereon all the powers conferred by these By-Laws upon the Board of Directors, this body ceasing to function.----------

---When liquidation of the corporate properties shall have - been effected and the liabilities shall have been paid in - full, the balance, if any, shall be distributed among the - shareholders of the Company, in proportion to their respective interests therein without priority or preference among them.-

--- SECOND: That out of the authorised capital of this Company, amounting to FIVE THOUSAND DOLLARS, Official Currency, - two shares registered of a par value of ONE HUNDRED DOLLARS each, are issued and subscribed in this act by the appearers in the following proportion:----------

--- Dr. FRANCISCO GURRI Y CARRIDO, one share of ONE HUNDRED DOLLARS par value.----------

--- Dr. RICARDO MORAN Y CASTRO, one share of ONE HUNDRED DOLLARS par value.----------

--- By reason of their respective contributions, as herein - set forth, Messrs. Curri and Moran receive in this act, at - their entire satisfaction, provisional certificate of stock of the Company covering their respective contributions.----

--- THIRD:- That all the shareholders, representing all the issued and outstanding shares, being present in this act, - constitute themselves in a Special General Meeting of Shareholders, and proceed to adopt the following resolutions:----

--- To elect the first Board of Directors of the Company, to be composed by the following persons: Hyman Harvey Klein, - Francisco Curri y Garrido, Ricardo Morán y Castro and Manuel Vega Penichet.----------

--- Being present the tree last ones, they take possession - of their respective charges, which they shall perform for a period of time of one year, according to the By-Laws and until their successors be elected and take possession.--------

--- Mr. Hyman Harvey Klein, will be notified in due time of his appointment, in order to know whether or not he accepts the office.----------

--- FOURTH:- That with such character and constituting themselves in Board of Directors, and with the sufficient quorum to adopt resolutions, according to the By-Laws of the Company, they appoint the following officers:----------

--- President: HYMAN HARVEY KLEIN.----------

--- Vice-President: Dr. FRANCISCO CURRI Y GARRIDO.----------

--- Treasurer: HYMAN HARVEY KLEIN.----------

--- Secretary: Dr. RICARDO MORAN Y CASTRO.----------

--- First Assistant-Secretary: Dr. MANUEL VEGA Y PENICHET.--

--- FIFTH:- Messrs. Curri, Morán and Vega declare that they

accept the offices for which they have been appointed and -

take possession of same and, they shall perform it for a period of one year, according to the By-Laws and until their successors be elected and take possession.----------

--- Mr. Hyman Harvey Klain, will be notified in due time of his appointment, in order to know whether or not he accepts the office.----------

--- SIXTH:- The appearers declare that they accept the present deed and all the obligations contained therein, and that they obliged themselves, in good faith, to the fulfillment of same.

--- SEVENTH: The appearers designate and submit themselves expressly to the Judges and Courts of this City, for all judicial and extrajudicial matters that may originate from this instrument waiving their rights to their respective domiciles.------

--- I, the Notary, verbally informed the appearers as to the - requisites of law and statute.----------

--- THUS STATE and execute the appearers and after reading - this instrument to the appearers, who waived their right to - do so themselves, of which I informed them they all ratify - same and sign before me.- To all of which, as well as to my personally knowing the appearers, and to the fact that their place of birth, nationalities, civil status, occupations and domiciles have been stated according to their respective declarations and to everything else contained in this instrument, I the Notary, certify.----------

--- Making the following corrections with the express aprobation of the executors: (Corrections follow).- F. GURRI.- MANUEL VEGA.- RICARDO MORAN.- A. VALDES RODRIGUEZ.----------

--- HABANA, September 9, 1944.- ATTEST.----------

--- IN WITNESS WHEREOF, I have hereunto affixed my hand this ninth day of September, 1944.----------

Secretary.

DEFENDANT'S
EXHIBIT AV
U. S. Dist. Court
S. D. of N. Y.
APR 29 1955

Certificate of Accuracy

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

TRANSLATION
FROM Spanish to English

On this day personally appeared before me who, after being duly sworn, deposes and states: AMARO PASTOR

That he is a translator of the Spanish and English languages by profession and as such connected with the LAWYERS' & MERCHANTS' TRANSLATION BUREAU;

That he is thoroughly conversant with these languages;

That he has carefully made the attached translation from the original document written in the Spanish language, (on the official paper of the LAWYERS' & MERCHANTS' TRANSLATION BUREAU); and

That the attached translation is a true and correct English version of such original, to the best of his knowledge and belief.

SUBSCRIBED AND SWORN TO BEFORE ME
THIS APR 5 - 1955

Amaro Pastor

Hertha Bertsche

HERTHA BERTSCHE
Notary Public, State of New York
No. 41-0277200
Qualified in Queens County
Cert. filed with N.Y. Co. Clk.
Commission Expires March 30, 1956

LAWYERS' & MERCHANTS' TRANSLATION BUREAU
C. V. BERTSCHE WM. BERTSCHE
(*Translation Service Bureau*)
EST. 1908

TRANSLATION

TRANSLATION

from: SPANISH CVB:IB

TRANSCRIPT

of the

INSTRUMENT NO. 17

Executed

on January 26, 1944

before

Dr. Antonio Valdés Rodríguez y Villada

Attorney-at-Law and Notary

Aguiar 411

H A V A N A

CUBA

LAWYERS' & MERCHANTS' TRANSLATION BUREAU
Carl V. Borusho (Translation Service Bureau) Wm. Borusho
Est. 1918
PHONE DIGBY 4-2930-2931 11 BROADWAY, NEW YORK 4, N. Y.

TRANSLATION
from:

NUMBER SEVENTEEN

ORGANIZATION OF COMPANY

In the City of Havana, on the 26th day of January, 1944,

Before me, Dr. Antonio Valdes Rodriguez y Villada, Attorney-at-Law and Notary of the District and College of this Capital City and residing in this Capital City,

There appeared:

Dr. Francisco Curri y Garrido, a native of Havana, a citizen of Cuba, of age, single, attorney-at-law and resident of this City, residing at calle de Aguiar No. 411;

Dr. Ricardo Moran y Castro, a native of Guanabacca, a citizen of Cuba, of age, married, attorney-at-law and residing in this Capital City at calle de Aguiar No. 411;

And Dr. Enrique De Cubas y Melendez, a native of Havana, a citizen of Cuba, of age, single, attorney-at-law residing in this City at Aguiar No. 411.

The appearers showed me, the Notary, that they are in full possession and enjoyment of their civil rights and they have, in my opinion, the required legal capacity for the execution of this instrument, nothing to the contrary being known to me, the Notary, and they declared:

FIRST: that they have agreed to organize and by

these presents organize a corporation which is to be governed by the following

ARTICLES OF INCORPORATION AND BY-LAWS

NAME OF THE CORPORATION

ARTICLE 1: This Company, which is constituted under the Laws of the Republic of Cuba, shall be called "AGENCIAS DESTILLADORAS S. A."- in English "DISTILLERS AGENCIES, INC."

CORPORATE DOMICILE

ARTICLE 2: The Company shall have its domicile in the City of Havana at House No. 411 of calle de Aguiar. The corporate domicile may be transferred to any other place of the territory of the Republic of Cuba, by resolution of the Board of Directors. The Board of Directors may at any time establish offices and branches within or without the Republic of Cuba.

CORPORATE PURPOSES

ARTICLE 3: The Company may engage in the following:

a) Carry out all kinds of transactions as agents, brokers, importers and exporters of all kinds of products irrespective of the nature of same;

b) Carry out, without limitation or restriction, all and any business enterprises which the Board of Directors may deem necessary or advisable;

c) To execute any acts,and to hold and exercise

any rights and assume and perform any obligations which a corporation organized under the Laws of Cuba may execute, carry out, exercise, assume or perform.

CORPORATE CAPITAL

ARTICLE 4: The authorized capital of this Corporation is 5,000 Pesos official currency represented by 50 shares of 100 Cuban Pesos each.

SHARES OF STOCK

ARTICLE 5: The shares of stock may be registered or bearer shares at the option of each stockholder. The shares of stock shall be paid up in full and shall be represented by stock certificates taken from the corresponding stub-books. In each stock certificate there shall be stated the number of shares represented by such certificate. These shares shall not be subject to installment payments and shall be indivisible with respect to the Corporation. In case of joint ownership of one share, all the interested parties must appoint a single representative or attorney-in-fact to exercise the rights of same.

The stock certificates shall be signed by the President and the Secretary of the Corporation, or by those who take their place or substitute for them in accordance with the Articles of Incorporation.

The registered shares shall be recorded in the Stock Register kept for this purpose by the Corporation.

TRANSLATION

from:

DURATION

ARTICLE 6: The Corporation is organized for an indefinite period of time.

FISCAL YEAR

ARTICLE 7: The fiscal year shall start on the 1st day of January and terminate on the 31st day of December. The first fiscal year shall comprise a period from today until the 31st day of December 1944.

STOCKHOLDERS MEETINGS

ARTICLE 8: There shall be Regular and Special Stockholders Meetings. The Regular Stockholders' Meetings shall be held during the first ten days of the month of January of each year, in the place and on the day and hour stipulated by the President in office as such of the Corporation, for the purpose of approving the yearly balance sheet, elect the Board of Directors and take up any other business of interest to the Corporation submitted to its consideration.

The Special Stockholders' Meetings shall be held at any time called by the President in office and upon the request of any director or stockholder representing 25% of the capital in circulation, (outstanding).

The calls or convening notices for the Regular or Special Stockholders' Meetings shall state the purpose, place, date and hour of the meeting and shall be published only once in a large newspaper of the City of Havana, at least 20 calendar days before the holding of the stipulated date for the meeting.

The Stockholders' Meetings, whether regular or special, may be held outside of the territory of the Republic of Cuba.

There shall not be required any special call or notice whenever all the shares issued and outstanding are represented at the meeting, nor in the event that the stockholders waive, in writing, their right to be called for one or more meetings or are represented at the meetings.

Q U O R U M

ARTICLE 9: A quorum for the holding of Stockholders' Meetings shall consist of more than one-half of the total shares issued and outstanding.

The resolutions shall be adopted at the Regular and Special Stockholders' Meetings by majority of votes of the stockholders present, except in the cases provided for in Article 22 of the Articles of Incorporation, and once they have been adopted they shall be binding upon all stockholders whether or not they have been present at the meeting.

ADMINISTRATION AND MANAGEMENT

ARTICLE 10: The management and administration of business matters shall be in charge of a Board of Directors with the powers set forth below.

BOARD OF DIRECTORS

ARTICLE 11: The Board of Directors shall consist of not less than 2 and not more than 5 directors.

ELECTION OF THE BOARD OF DIRECTORS

ARTICLE 12: The persons who are to form the Board of Directors shall be elected each year at the Regular Stockholders' Meetings. In order to hold the office of director, it is not necessary to be a stockholder of the Corporation.

The Board of Directors shall be elected for a period of one year, but it shall continue in office and be considered as legally constituted until their successors have been elected and taken office.

At a Special Meeting of the Stockholders duly called for this purpose, all or part of the directors of the Corporation may be discharged from their offices, by a secret vote of two-thirds of the shares of stock issued and outstanding.

The office of director shall become vacant also on account of resignation, death, insanity, placing under a committee voluntary bankruptcy or insolvency of the director. The vacancies which may occur among the members of the Board of Directors of the Corporation shall be filled by the remaining members of the Board of Directors until the Stockholders' Meeting adopts the corresponding resolution.

MEETINGS OF THE BOARD OF DIRECTORS

ARTICLE 13: The Board of Directors shall meet at the Regular Meetings once a year, without the necessity of a

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prior call, immediately after the holding of the Regular Stockholders' Meeting or as soon as possible afterwards, in order to take up any business which is duly submitted to it.

It shall meet at Special Meetings whenever called by the Secretary, in accordance with instructions issued by the President in office.

The calls for Special Meetings of the Board of Directors shall be sent by mail at least 4 days in advance, addressed to the last known domicile.

These calls shall not be necessary whenever all the members of the Board of Directors are present at the corresponding meeting or if they waive in writing or by cable their right to be called.

The meetings of the Board of Directors may be held within or without the Republic of Cuba and the directors may appear personally or have themselves represented by any person through written appointment issued for this purpose (proxy).

The majority of the Directors shall constitute a quorum and the resolutions shall be adopted by a majority of votes of the Directors present.

POWERS OF THE BOARD OF DIRECTORS

ARTICLE 14: The Board of Directors shall have all the powers which the Code of Commerce and the Provisions of these Articles of Incorporation and By-Laws stipulate in their favor, and any other powers conferred upon them by the Stockholders' Meetings and especially the following:

a) To elect and remove freely the officers of the Corporation and to establish their compensation whenever this is proper;

b) To transfer the corporate domicile to any place within the territory of the Republic of Cuba and to open, maintain and close branches and agencies within or without the Republic of Cuba;

c) To direct, effect, administer and realize any assets, business undertakings and mercantile operations of lawful commerce which the Company may lawfully undertake and carry out within or outside of the Republic of Cuba;

d) To execute or grant powers of attorney for lawsuits for the representation of the Corporation, toward the Government, the Provinces, the Municipalities and the Courts of Justice of the Republic and abroad, with any and all the necessary powers;

e) To carry out any other act which is not especially reserved, in accordance with these Articles of Incorporation and in accordance with the Laws of Cuba, to the Stockholders' Meetings;

f) To delegate all and any of these powers temporarily and permanently in favor of any person, whether a stockholder, director, administrator or officer of the Corporation or any other person completely outside of the Corporation.

OFFICERS OF THE CORPORATION

ARTICLE 15: The Board of Directors shall elect the

following officers of the Corporation:

A President, a Vice President, a Treasurer, an Assistant Treasurer, a Secretary, a 1st Assistant Secretary, a 2nd Assistant Secretary.

The officers shall hold office for one year but they shall continue in office until their successors have been elected and have taken office.

In order to be an officer of the Corporation it shall not be necessary to be a director nor a stockholder.

One single person may hold more than one office as officer.

THE PRESIDENT

ARTICLE 16: The President of the Corporation shall be the Chief Executive and legal representative of the Corporation and shall have the following duties and powers:

a) To act as Chairman of all the Stockholders' Meetings and of the Board of Directors;

b) To execute and obtain the carrying out of the resolutions adopted by the Stockholders' Meetings and by the Board of Directors;

c) To execute any agreements which the Company may resolve to execute and to sign, together with the Secretary, the stock certificates;

d) To hold the full representation of the Company in and out of Court toward any persons, individuals, authorities,

corporations, offices, Courts and Tribunals, the State, the Provinces and the Municipalities, exercising the rights and choses in action inherent in the Company, defending the Company in all legal proceedings which may be instituted against the Company and to execute powers of attorney for legal proceedings, it being sufficient in connection with third parties, that he submits proof of his character as President in office of the Corporation by a certificate issued by the Secretary for the purpose of representing the Corporation in and out of Court;

e) To appoint and discharge the employees of the Corporation and to establish their remuneration;

f) To discharge all the other duties and obligations which may be entrusted to him in due time by the Board of Directors.

THE VICE PRESIDENT

ARTICLE 17: The Vice President shall substitute for the President, with the same rights and duties, during his absence, irrespective of the reason for such absence;

He shall furthermore have the duties and attributions (powers) especially stipulated by the Board of Directors.

THE TREASURER

ARTICLE 18: The Treasurer shall have the following duties and powers:

a) To attend to the accounting of the Corporation,

to draw up the balance sheets, inventories and corresponding liquidations (statements);

b) To sign by himself all the checks, drafts, bills of exchange, promissory notes, pledges, notes, loans, bonds, obligations and other documents representing debts of the Corporation;

c) To carry out collections, payments and to open and maintain accounts with banks, companies and banking institutions, with credit and private institutions, depositing and withdrawing the funds by himself.

d) To submit yearly a report to the Board of Directors and to the Stockholders' Meeting;

e) To exercise any other powers and functions stipulated by the Board of Directors.

THE ASSISTANT TREASURER

ARTICLE 19: The Assistant Treasurer shall substitute for the Treasurer with the same rights and duties during his absence, irrespective of the cause of the absence.

He shall furthermore have the duties and powers especially stipulated in his favor by the Board of Directors.

THE SECRETARY

ARTICLE 20: The Secretary of the Corporation shall have the following powers and duties:

a) To be present at all the meetings held by the Stockholders and by the Board of Directors, drawing up, entering and signing the corresponding Minutes in the books

destined for this purpose and to enter in the Minute Books the minutes corresponding to the meetings held by the Stockholders or by the Board of Directors outside of the Republic of Cuba, whether or not he has been present at such meetings, translating same whenever necessary and certifying the said entries of the resolutions, minutes or happenings which are set forth in same;

b) To receive and transmit all calls and notices of the Corporation;

c) To sign the stock certificates together with the President;

d) To carry and keep the stub books and stock registers;

e) To attend to translations, serve transcripts from the Articles of Incorporation of the Corporation, from the books in his charge of facts referring to the Corporation and of the appointments and functions of the Directors and officers;

f) To discharge any other duties and powers stipulated for him by the Board of Directors.

THE ASSISTANT SECRETARIES

ARTICLE 21: The Assistant Secretaries shall have the powers and duties of the Secretary when the latter should not discharge same for any reason whatsoever.

AMENDMENT OF THE ARTICLES OF INCORPORATION AND BY-LAWS

ARTICLE 22: These Articles of Incorporation and

By-Laws may be amended in whole or in part, by resolution of the Stockholders' Meeting especially called for such purpose, at which there are present at least two-thirds of the stockholders holding two-thirds of the shares issued and outstanding.

The resolution must be adopted by the affirmative vote of two-thirds of the shares issued and outstanding.

A like requirement is necessary in connection with the following:

a) Increase or reduction of the corporate capital;

b) Declaration of the Corporation into bankruptcy;

c) Merger or consolidation of the Company with other enterprises;

d) Dissolving of the Corporation.

DISSOLUTION AND LIQUIDATION OF THE CORPORATION

ARTICLE 23: After there has been decided the dissolution of the Corporation in the manner provided for in the foregoing Article, the liquidation shall be proceeded with and for this purpose the Stockholders' Meeting when adopting the resolution shall appoint the liquidator or liquidators necessary who shall be vested - as from that moment on with all the powers attributed by these Articles of Incorporation and By-Laws, in favor of the Board of Directors when said organization shall terminate its functions.

After the liquidation of the assets of the Corporation and after payment in full of the liabilities, the balance

if any, shall be distributed among the stockholders of the Corporation prorata the interest represented by them without any preference or ranking among themselves.

SECOND: Out of the authorized capital of this Company amounting to 5,000 Pesos, Cuban currency, there are issued during these proceedings 2 shares of a value of 100 Pesos par value each which are subscribed in cash by the appearers in the following proportion:

Dr. Enrique de Cubas y Melendez, 1 share of 100 Pesos par value -

And Dr. Ricardo Moran y Castro, 1 share of 100 Pesos par value.

By reason of the contributions respectively made as stated above, Messrs. Cubas and Moran received during these proceedings, to their entire satisfaction, a provisional stock certificate of the Corporation, each for the amount respectively contributed by them.

THIRD: That making up - as they do make up in these proceedings - the total of the stockholders of all the shares issued and outstanding, they organize a Special Stockholders' Meeting and proceed to adopt the following resolution:

They appoint the first Board of Directors of the Corporation which shall consist of the following gentlemen:

Hyman Harvey Klein
Francisco Gurri y Garrido
Ricardo Moran y Castro, and
Enrique de Cubas y Melendez

The latter three being present, they took possession of their offices for one year in accordance with the provisions of the Articles of Incorporation and By-Laws and until their succéssors are elected and have taken office.

There shall be communicated to Mr. Hyman Harvey Klein his appointment so that he may or may not accept such office.

FOURTH: In the same character and having constituted themselves as Board of Directors and with a quorum sufficient for the adoption of resolutions, as provided for in the Articles of Incorporation and By-Laws of the Corporation, they constitute themselves as such Board and resolve to appoint and by these presents do appoint the following officers of the Corporation:

President:	Hyman Harvey Klein
Vice-President:	Dr. Francisco Gurri y Garrido
Treasurer:	Hyman Harvey Klein
Secretary:	Dr. Ricardo Moran y Castro
Asst. Secretary:	Dr. Enrique de Cubas y Melendez

FIFTH: Mr. Gurri, Mr. Moran and Mr. Cubas declare that they accept the office for which they have been appointed and forthwith take office as such which they are to hold for one year in accordance with the provisions of the Articles of Incorporation and By-Laws and until their successors have been elected and have taken office.

Mr. Hyman Harvey Klein is to be advised, in due time,

TRANSLATION -16-

from:

of his appointment so that he may or may not accept such office.

SIXTH: They accept all the rights and obligations arising in connection with them from the provisions of these presents, promising in good faith to perform same.

SEVENTH: The appearers designate this City and its Courts for any proceedings in and out of Court which may arise from these presents, waiving the jurisdiction of their own domiciles.

I, the Notary, advised the appearers of the pertinent provisions of the Laws and Regulations.

THUS DECLARED AND EXECUTED by the appearers, to whom I, the Notary, have read aloud this instrument during one uninterrupted proceeding, as they waived their right to read this instrument themselves of which I, the Notary, had advised them and they thereupon confirmed the contents thereof and affixed their signatures in my, the Notary's presence.

I, the Notary, herewith certify that I know the appearers, their nationalities, citizenships, civil status, professions, occupations and residences, in accordance with their own statements and I, the Notary, also certify to all the other contents of this instrument. (Corrections approved).

Signed: RICARDO MORAN - F. GURRI - ENRIQUE DE CUBAS Y MELENDEZ - A. VALDES RODRIGUEZ.

NOTE: On this day I, the Notary, issue the first transcript on 8 sheets of paper for the Cia. Agencia Destiladora S.A. upon the request of same, provided with an Internal Revenue Stamp for $1.20 and a stamp of $1.50 for the Notarial Pension Fund which have been duly cancelled, by me.

Havana, January 29, 1944

I certify to this: - A.V.R. - there is a stub number 59675.

Annotation: On basis of the first transcript to which the foregoing annotation refers, I herewith certify that on February 10, 1944 there were paid the corresponding dues and taxes to the Administration of the Internal Revenue Office of the Eastern Part of Havana, as appears from Receipt No.5250 and which was duly recorded in the Register of Corporations, Section I, Page 2112, Folio 88 of Volume 22, first entry and in the First Mercantile Register of Havana, Page 27555, Folio 175 of Volume 7037 of the Register of Companies, first entry.

Havana, March 29, 1944

I certify to this: A.V.R.

The foregoing is a true transcript from the original which under No. 17 appearing at the beginning hereof, is recorded in the Register of Public Documents referring to the Year 1944 of the Notarial Office under my charge and to

which I refer. In order to deliver same to Dr. Francisco Gurri y Garrido, I issue this first transcript on 8 sheets of paper written on the typewriter to which I have attached and cancelled the Internal Revenue Stamps for an amount of $1.20 and the Notarial Pension Fund Stamps for $1.50, making an annotation to the effect that this transcript was issued on the margin of the original record, which bears No. 17 (consecutive number) and is dated January 26, 1944.

Havana, April 11, 1947.

Signed: A. Valdes Rodriguez

Stamp Reading: Antonio Valdes Rodriguez Villada
Attorney-at-Law and Notary
Havana

(Translator's note: This is followed by the authentication of the U.S.A. Embassy written in English. See original)

AMINED BY

Agencias Destiladoras, S.A.

Aguiar 411,

Havana, Cuba.

348

Duncan Harwood & Co. Ltd.

DISTILLERS

CABLE ADDRESS
"HARWOOD"

TELEPHONE
LANGARA 0286

6500 SHAUGHNESSY STREET
Vancouver, Canada

VIA AIR MAIL

June 29th, 1944.

Agencias Destiladoras, S.A.,
Aguiar 411,
Havana, Cuba.

Dear Sirs:

Enclosed please find documents covering the following cars of Harwood:

C.P. 178005 - 1600 Cs. - R. C. Williams & Co. Inc. New York, N.Y.
C.P. 178449 - 1600 Cs. - R. C. Williams & Co. Inc. New York, N.Y.
C.P. 174931 - 1600 Cs. - National Distributing Co. Atlanta, Georgia.
C.P. 171281 - 1600 Cs. - Equitable Trading Corp. New York, N.Y.

Yours truly,
DUNCAN HARWOOD & CO. LTD.

Miss E. J. BURROUGH
Bookkeeper

EJB/LM
ENC.

DEFENDANT'S KC
EXHIBIT AY
U. S. Dist. Court
S. D. of N. Y.
APR 2 1955

Duncan Harwood and Company Limited.

11057
37

DATE June 21st, 1944.

Vancouver, Canada

YOUR REQ. NO

OUR ORDER NO

INVOICE NO.

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

ADDRESS

IN BOND SHIPMENT
FREIGHT COLLECT

Car No. CP 178005

TERMS

SHIPPED VIA V&LI BCER CPR to Hamilton TH&B to Welland
MC NYC to destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per cs.	AMOUNT	DUTY Wine Glns. per Cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	5ths	$8.05	$12,880.00	2.40	
						$ 12,880.00
						U.S. Funds

Weight of glass - All U.S.....19,200.00 Lbs.
Total U.S.Wine Gls..... 3,840.00
Total U.S.Pf. Gls..... 3,471.36
Alcoholic Content by Volume..... 1,735.68
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in Bond in Vancouver, B.C.
Age of Spirits - No Age
U.S.Permit No. ~~[illegible]~~ 2-I-29
Glass Value $639.99

Cases marked: Imported by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.,
Havana, Cuba.

NOTIFY: R.C.Williams, & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.

Defendant Klein Exhibit AY

Defendant Klein Exhibit AY

Duncan Harwood and Company Limited

11058 E

37

DATE June 21st, 1944.

Vancouver, Canada

YOUR REQ NO

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

OUR ORDER NO

IN BOND SHIPMENT
FREIGHT COLLECT

ADDRESS

INVOICE NO

Car No. CP 178006

TERMS

SHIPPED VIA VALI BCER CPR to Hamilton TH&B to Welland
MC NYC to destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per Case	AMOUNT	DUTY Wine Gls. per Cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	5ths	$8.05	$12,880.00	2.49	
						$ 12,880.00
						U.S. Funds

Weight of glass - All U.S.....19,200.00
Total U.S.Wine Gls..... 3,840.00
Total U.S.Pf. Gls..... 3,471.24
Alcoholic Content by Volume..... 1,735.00
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in Bond in Vancouver, B.C.
Age of Spirits - No Age
U.S.Permit No. XXXXX 2-I-29
Glass Value $639.99

Cases marked: Imported by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.,
Havana, Cuba.

NOTIFY: R.C.Williams, & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.

Form No. [illegible]
FOREIGN SERVICE
(Revised March 1939)

DECLARATION OF SHIPPER OF FOOD, DRUG, AND COSMETIC PRODUCTS

Regarding shipment covered by Invoice No. 5072, *certified at* Vancouver, B. C.

, *on* June 21st, 1944.
(Date)

I, the undersigned, am the Duly Authorized Attorney for the seller
(Seller or owner, or agent of seller or owner)
of the merchandise mentioned and described in the accompanying consular invoice. It consists of food, drug, or cosmetic products (or devices as defined by the Federal Food, Drug, and Cosmetic Act) which contain no added substance injurious to health. These products were grown in Canada
(Country)
and manufactured in Vancouver, B. C. (Town and country) by United Distillers Limited. (Name of manufacturer)
during the year 1944, and are exported from Vancouver, B. C. (City) and consigned to New York, New York. (City) They bear no false labels or marks, contain no added coloring matter except None
(State coloring matter used, if any)
no preservative (salt, sugar, vinegar, or wood smoke excepted) except None
(State preservatives used, if any)

I further declare that such article or articles are not of such a character as to prohibit their entry into the United States in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act in that they have not been manufactured, processed, or packed under insanitary conditions, nor are they of a character to cause prohibition or restriction in sale in the country where made or from which exported, nor are they adulterated or misbranded, nor are they in violation of section 505 of the Federal Food, Drug, and Cosmetic Act.

I further declare that the drug products herein mentioned and described contain no opium, coca leaves, cocaine, or any salt, derivative or preparation of opium, coca leaves, or cocaine, the importation of which into the United States is prohibited by the Narcotic Drugs Import and Export Act, as amended.

I do solemnly and truly declare the foregoing statements to be true, to the best of my knowledge and belief.

Dated at Vancouver, British Columbia (Place) this 21st day of June, 1944. (Month and year)

UNITED DISTILLERS LIMITED.
PER DENNISON & RAINES ATTY.

(Signature) Per Dennison

INSTRUCTIONS TO CONSULAR OFFICERS

1. This declaration is to be firmly attached to all copies of consular invoice covering shipment of over $100 in value.
2. The official seal must be placed on the declaration, and the number, date of certification of invoice, and name of post plainly indicated.
3. Shipper should be instructed to declare the name of the manufacturer whenever possible.
4. If the declaration is believed to be incorrect or incomplete, or if consul believes that the goods are liable to detention, he should note such information on the invoice in the consular corrections or remarks column.

U. S. GOVERNMENT PRINTING OFFICE 16—[illegible]

Form No. 199
FOREIGN SERVICE
(Revised March 1938)

DECLARATION OF SHIPPER OF FOOD, DRUG, AND COSMETIC PRODUCTS

Regarding shipment covered by Invoice No. 5072, *certified at* Vancouver, B. C.

, *on* June 21st, 1944.
(Date)

I, the undersigned, am the Duly Authorized Attorney for the seller
(Seller or owner, or agent of seller or owner)
of the merchandise mentioned and described in the accompanying consular invoice. It consists of food, drug, or cosmetic products (or devices as defined by the Federal Food, Drug, and Cosmetic Act) which contain no added substance injurious to health. These products were grown in Canada
(Country)
and manufactured in Vancouver, B. C. by United Distillers Limited.
(Town and country) (Name of manufacturer)
during the year 1944, and are exported from Vancouver, B. C. and
(City)
consigned to New York, New York. They bear no false labels or marks, contain no
(City)
added coloring matter except None
(State coloring matter used, if any)
no preservative (salt, sugar, vinegar, or wood smoke excepted) except None
(State preservatives used, if any)

I further declare that such article or articles are not of such a character as to prohibit their entry into the United States in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act in that they have not been manufactured, processed, or packed under insanitary conditions, nor are they of a character to cause prohibition or restriction in sale in the country where made or from which exported, nor are they adulterated or misbranded, nor are they in violation of section 505 of the Federal Food, Drug, and Cosmetic Act.

I further declare that the drug products herein mentioned and described contain no opium, coca leaves, cocaine, or any salt, derivative or preparation of opium, coca leaves, or cocaine, the importation of which into the United States is prohibited by the Narcotic Drugs Import and Export Act, as amended.

I do solemnly and truly declare the foregoing statements to be true, to the best of my knowledge and belief.

Dated at Vancouver, British Columbia this 21st
(Place)
of June, 1944.
(Month and year)

PER UNITED DISTILLERS LIMITED.
DENNISON & RAINES ATTY.

(Signature) Per [signature]

INSTRUCTIONS TO CONSULAR OFFICERS

1. This declaration is to be firmly attached to all copies of consular invoice covering shipment of over $100 in value.
2. The official seal must be placed on the declaration, and the number, date of certification of invoice, and name of post plainly indicated.
3. Shipper should be instructed to declare the name of the manufacturer whenever possible.
4. If the declaration is believed to be incorrect or incomplete, or if consul believes that the goods are liable to detention, he should note such information on the invoice in the consular corrections or remarks column.

U. S. GOVERNMENT PRINTING OFFICE 16—[illegible]

Form 128
FOREIGN SERVICE
(Revised August 1942)

—Attach Additional Sheets Here—

INVOICE OF MERCHANDISE

(Before preparing this invoice, read instructions carefully)

(1) PURCHASED ☒ (2) NOT PURCHASED ☐

(Do not include PURCHASED and NOT PURCHASED merchandise in ONE invoice; use SEPARATE invoice for each)

Vancouver, B.C. June 21, 1944.
(Place and date)

Invoice of 1000 Cs. Canadian Whisky (Merchandise) (3) { purchased from / agreed to be purchased from / shipped by

(2) United Distillers Ltd. (Seller or consignor) of Vancouver, B.C. (Address)

by order of { N. S. Williams Co. Inc. (Purchaser or consignee) of New York, N.Y. (Address)

(4) { as per order accepted June 1944 (Date)
for the account of Agencias Destiladora (Name) of Belle Havana, Cuba (Address)

to be shipped per Freight via C.P.R. and connections. (Carrier)

(5) Marks and Numbers on Shipping Packages	(6) Manufacturer's or Seller's Numbers or Symbols	(7) Importer's Numbers or Symbols	(8) Quantities and Full Description of Goods (N. B.—Always state the cost of packing, and all other costs, charges, and expenses)	(9) Invoice Unit (See questions below)	(10) Invoice Total	(11) Current Price (Home consumption or Export) Per Unit
	1000		Cs. Canadian Whisky 1/5ths Consular Stamp & Export	8.05	12,880.00	$8.05
					8.00	
					12,888.00	Plus charges as under.

Freight collect, approximate freight $1482.00
F.O.B. Vancouver, B.C.
Freight at class 10,000 Value Class. $636.48
Product of Canada. Packed in Vancouver, B.C.
Validation fee $8.00 included above. Not subject to sales tax
at discharge of 10% ex export. Total wine gals 2540.00
Ale Address 1934 value. Cost labels $.08 included above B.C. revenue.
Stamps $8.00 purchased in New York, N.Y. May 5, 1944. Requisition 118.
Duty paid value in Canada not included above $12.00 per
Imp. Gal. of 2534.40 gals. Plus 8% sales tax on duty paid value. No
duty or taxes used in packing, Percentage charges. Basic Permit J-L-28. We
hereby certify that purchasers are holders of basic permit J-L-294 in full force
and effect to import such liquors.

(Read carefully instructions 1 and 9 before answering the first three following questions.)

Is this merchandise shipped in pursuance of a purchase or an agreement to purchase? yes (Yes or No)

If answer to preceding question is "Yes," have you entered as item 9 the purchase price of each item in the currency of purchase? Yes (Yes or No)

Is this merchandise shipped otherwise than in pursuance of a purchase or an agreement to purchase? NO (Yes or No) If answer is "Yes," indicate below whether you have entered as item 9 the present value for each item in the currency in which the transactions are usually made: (a) the value for home consumption including all applicable taxes in the country of exportation; or (b) the export value to the United States if higher; or (c) in the absence of the foreign value and the export value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive for such merchandise if sold in the ordinary wholesale quantities in the country of exportation; or (d) in the absence of all of the foregoing, the cost of production.

(State whether (a), (b), (c), or (d) is applicable)

Is the currency, entered as item 9, gold, silver, or paper? Paper (State which)

Have you enumerated all charges and stated whether each amount has been included in or excluded from the above invoice amounts? Yes (Yes or No) If the inland freight is included in the invoice price or value, is the price or value of the merchandise the same at the factory as at the point of delivery? none (Yes or No)

Have you separately itemized all rebates, drawbacks, bounties, or other grants allowed upon the exportation of the merchandise? None (Yes or No)

Is such or similar merchandise offered or sold in the home market for home consumption? yes (Yes or No) If so, what taxes are applicable? $12.00 per gallon on 2534.40 Imp. Gal. Sales Tax on duty paid value. (Rate and kind)

(When invoice is signed by an authorized agent the name of his principal must be shown.)

Signature of Seller or Shipper United Distillers Ltd. Dennison Mines Ltd.

By (Authorized agent)

11652B

3

CERTIFICATE RELATIVE TO GENERAL IMPORTS ORDER M-63

VANCOUVER B.C. CANADA. JUNE. 21st.1944

I HEREBY CERTIFY THAT.THE SHIPPER OF THE MERCHANDISE DESCRIBED HEREIN (INVOICE NO .....5072.) HAS DECLARED THAT HE HAS ASCERTAINED THAT THE COMMODITY WHICH HE IS EXPORTING DOES NOT APPEAR ON LIST I .II...or III OF THE GENERAL IMPORTS ORDER M-63

UNITED DISTILLERS LTD

[signature] AGENT

VICE CONSUL OF THE UNITED STATES OF AMERICA.

Form No. 486
FOREIGN SERVICE
Revised March 1939

Defendant Klein Exhibit AY

CONSULAR INVOICE OF MERCHANDISE

Invoice No. ..... Issued in { Triplicate / Quadruplicate

Certified June 21, 1944.
(Date)

FOREIGN SERVICE OF THE UNITED STATES OF AMERICA AT

Vancouver, B.C.

Date June 21, 1944.

Seller / ~~Consignor~~ } United Distillers Ltd.
Vancouver, B.C.

Purchaser / Consignee } R. C. Williams, Co. Inc.
New York, New York.

Carrier VLIRY BCERY CPRT and associations.
(Vessel or railroad)

Port of shipment Vancouver, B.C.

Destination of goods New York, N. Y.

Port of arrival Niagara Falls, N.Y.

Port of entry New York, N.Y.

Amount of invoice $12,885.80

Kind of goods 1600 Cases Canadian Whisky

16—22731

DECLARATION OF SELLER OR SHIPPER, OR THE AGENT OF EITHER, WHEN MERCHANDISE IS SHIPPED IN PURSUANCE OF A PURCHASE OR AN AGREEMENT TO PURCHASE

I, ~~We,~~ } Louis O. Dennison

acting in the capacity described below, truly declare that ~~I am the attorney for~~ of ~~United Distillers Ltd.~~ is / are } the { ~~seller~~ / sellers } or { ~~shipper~~ / shippers } of the merchandise described in the within or attached invoice; that the merchandise is sold or agreed to be sold; that there is no other invoice differing from the within or attached invoice, and that all the statements contained herein and in such invoice are true and correct.

I / We } further declare that Shipment to be made immediately

and that it is intended to make entry of said merchandise at the port of New York, N.Y.

in the UNITED STATES OF AMERICA.

Dated at Vancouver, B. C. this 21st day of June, 1944.

United Distillers Ltd.
(Seller)

(Shipper)

(Dennison & Raines Atty.)
(Agent of seller)

(Agent of shipper)

CONSULAR CERTIFICATE
Form 140

(Date)

I do hereby certify that this invoice was this day produced to me by the signer of the above declaration.

I do further certify that I am satisfied that the person making the declaration above is the person he represents himself to be, and that a fee of $2.50 United States currency equal to ....., has been paid by affixing stamps to the original copy of this document.
(Local currency)

Witness my hand and seal of office the day and year aforesaid.

..... of the UNITED STATES OF AMERICA.

DECLARATION OF SHIPPER OR HIS AGENT WHEN THE MERCHANDISE IS SHIPPED OTHERWISE THAN IN PURSUANCE OF A PURCHASE OR AN AGREEMENT TO PURCHASE

I, We, } .....

acting in the capacity described below, truly declare that .....

of .....

is / are } the { shipper / shippers } of the merchandise described in the within or attached invoice; that the merchandise is shipped otherwise than in pursuance of a purchase, or an agreement to purchase; that there is no other invoice differing from the within or attached invoice, and that all statements contained herein and in such invoice are true and correct.

I / We } further declare that .....

and that it is intended to make entry of said merchandise at the port of .....

in the UNITED STATES OF AMERICA.

Dated at ..... this ..... day of .....

(Shipper)

(Agent of shipper)

CONSULAR CERTIFICATE
Form 140

(Date)

I do hereby certify that this invoice was this day produced to me by the signer of the above declaration.

I do further certify that I am satisfied that the person making the declaration above is the person he represents himself to be, and that a fee of $2.50 United States currency equal to ....., has been paid by affixing stamps to the original copy of this document.
(Local currency)

Witness my hand and seal of office the day and year aforesaid.

..... of the UNITED STATES OF AMERICA.

Defendant Klein Exhibit AY

11058 B

37

PARTICULARS FOR CONSULAR INVOICE

Order of Chase National Bank New York N.Y.
For account of Agencias Destilladoras S.A. ~~[illegible]~~

T.204 PERMIT NO.

SHIP TO: Notify R. C. Williams & Co. Inc.

VIA N & L.I. B.C.R. & C.P.R. to Hamilton, T.H. & B. to Welland
M.C. to Suspension Bridge N.Y.C. to dest.

ESTIMATED FREIGHT 2904.00

WEIGHT OF GLASS (~~CANADIAN~~ OR U.S.) 38,400 (38,400) U.S.REV.STAMPS

U.S. WINE GALLONS 7680.00

U.S. PROOF GALLONS 6942.72

ALCOHOLIC CONTENT BY VOLUME 3471.36

Purchased in New York N.Y.
May 5, 1944 Requisition #115

DATE OF SHIPMENT June 22/44

BASIC PERMIT NO. ~~[illegible]~~ 2-I-29 DATED

VALIDATION FEE ON 5068.80 IMPERIAL PF. GLS. $ 1013.76

DETAILS OF SHIPMENT

VALUE	CASES	BRAND	SIZE	GROSS WEIGHT	PRICE	GLASS WEIGHT	TOTAL WINE GL.	U.S.PF. GLNS.	Alc. Cont. LABELS COST ETC.	
$25,760	3200	Canadian whisky	4/5 Th qts.	105600	8.05	38400	7680.00	6942.72	3471.36	1.60

Value of Glass $1279.97

6399.8

Shipper UNITED DISTILLERS LTD.

For Duncan Harwood & Co. Ltd.
VANCOUVER, B. C.

Form 7 194 43

CERTIFICATE OF AGE AND ORIGIN

I, EDMUND JAMES MORGAN of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FIRST day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & COMPANY INCORPORATED NEW YORK CITY, NEW YORK, U.S.A. via the port of VANCOUVER, B. C. Whisky, marked:

HARWOODS BLENDED CANADIAN WHISKEY 26 2/3oz.

1943 8/44 1600 Cases ea. 2.00----3200.00 Glns. 20.8 2534.40 11.00 27,878.40
Ex 83

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, ~~[illegible]~~ and was distilled in the year 1943 ~~[illegible]~~ and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for ~~[illegible]~~ exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. VALI BCER & CPR to Hamilton TH&B to Welland MC to Suspension Bridge to destination.

Car No.

Shipping marks: R. C. WILLIAMS & COMPANY INCORPORATED
NEW YORK CITY
NEW YORK, U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 21 1944

E. J. Morgan

CERTIFICATE OF AGE AND ORIGIN

JUN 21 1944

CERTIFICATE OF AGE AND ORIGIN

I, EDMUND JAMES MORGAN of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FIRST day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & COMPANY INCORPORATED NEW YORK CITY, NEW YORK, U.S.A. via the port of VANCOUVER, B. C. Whisky, marked:

HARWOODS BLENDED CANADIAN WHISKEY 26 2/3os.

1943 8/44 Ex 83	1600	Cases ea.	2.00	----3200.00	Glns.	80.0	2534.40	11.00	27,878.40

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was distilled in the year 1943 and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. VALI BCER & CPR to Hamilton THAB to Welland NC to Suspension Bridge to destination.

Car No.

Shipping marks: R. C. WILLIAMS & COMPANY INCORPORATED
NEW YORK CITY
NEW YORK, U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 21 1944
DISTILLERY No. 2
VANCOUVER, B.C.

E. J. Morgan

CERTIFICATE OF AGE AND ORIGIN

I, [redacted] of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the [redacted] day of [redacted] 1944, the said United Distillers Limited, despatched to [redacted] via the port of [redacted] Whisky marked:

[redacted]

1943 6/44 [redacted] 11.00 [redacted]

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, [redacted] and was distilled in the year 1943 and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for [redacted]exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. [redacted]

Car No.

Shipping marks: [redacted]

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 21 1944

[redacted]

Defendant Klein Exhibit AY

CERTIFICATE OF AGE AND ORIGIN

CERTIFICATE OF AGE AND ORIGIN

I, [redacted] of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FIRST day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & COMPANY incorporated NEW YORK CITY, NEW YORK, U.S.A. via the port of VANCOUVER, B. C.

Whisky, marked:

HARWOODS BLENDED CANADIAN WHISKEY 26 2/3oz.

1943 6/44 1600 Cases ea. 2.00----3200.00 Glns. 20.8 2534.40 11.00 27,878.40
Ex 83

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was distilled in the year- 1943 and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. VALI BOER & CPR to Hamilton THAB to Welland MC to Suspension Bridge to destination.

Car No.

Shipping marks: R. C. WILLIAMS & COMPANY INCORPORATED
NEW YORK CITY
NEW YORK, U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 21 1944
DISTILLERY No. 2
VANCOUVER B.C.

CERTIFICATE OF AGE AND ORIGIN

I, [redacted] of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the [redacted] day of [redacted] 19[redacted], the said United Distillers Limited, despatched to [redacted]

[redacted] via the port of [redacted]

Whisky, marked:

[redacted]

[redacted]

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, [redacted] and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for [redacted]

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. [redacted]

Car No.

Shipping marks: [redacted]

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 21 1944

Defendant Klein Exhibit 49

C E R T I F I C A T E O F O R I G I N

I, THOMAS H. STEELE, of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:-

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on TWENTY FIRST day of JUNE 1944 the said United Distillers Limited, despatched to R. C. WILLIAMS & COMPANY INCORPORATED

NEW YORK CITY, NEW YORK, U.S.A. via the port of VANCOUVER, B. C.

Whisky, marked:-

HARWOODS BLENDED CANADIAN WHISKEY 26/ 2/3 oz.

1943 6/44
Ex 85 1600 cases ea. 2.00 --- 3200.00 Gls. 20.8 2534.40 11.00 27,878.40

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:-

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

Consignor Invoice No. VALI BURR & CPR TO HAMILTON THAB TO WELLAND MC TO SUSPENSION # 8072 BRIDGE TO DESTINATION

Car No.

Shipping marks: R. C. WILLIAMS & COMPANY INCORPORATED
NEW YORK CITY
NEW YORK, U.S.A.

CERTIFICATE OF ORIGIN

I, THOMAS H. STEELE, of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:-

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on TWENTY FIRST day of JUNE 1944 the said United Distillers Limited, despatched to R. C. WILLIAMS & COMPANY INCORPORATED

NEW YORK CITY, NEW YORK, U.S.A. via the port of VANCOUVER, B. C.

Whisky, marked:-

H.WOODS BLENDED CANADIAN WHISKY 26/ 2/3 oz.

1943 6/44
Ex 83 1600 cases ea. 2.00 --- 3200.00 Gls. 20.8 2834.40 11.00 27,878.40

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:-

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

Consular Invoice No. VIA LI BCER & CPR TO HAMILTON THAB TO WELLAND MC TO SUSPENSION
8072 BRIDGE TO DESTINATION

Car No.

Shipping marks: R. C. WILLIAMS & COMPANY INCORPORATED
NEW YORK CITY
NEW YORK, U.S.A.

Duncan Harwood and Company Limited

DATE June 21st, 1944.

Vancouver, Canada

YOUR REQ NO

OUR ORDER NO

SOLD TO Agencias Destiladores S.A.,
Aguiar 411,
Havana, Cuba.

IN BOND SHIPMENT
FREIGHT COLLECT

INVOICE NO

ADDRESS

Car No. CP 178449

TERMS

SHIPPED VIA WALI BOND CPR to Hamilton THAB to Welland
MC NYC to destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per Case	AMOUNT	DUTY Wine Gins. Per Cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	8ths	$ 8.05	$12,880.00	2.40	
						$ 12,880.00
						U. S. Funds

Weight of glass - All U.S.....19,200.00 Lbs.
Total U.S. Wine Gins..... 3,840.00
Total U.S. Pf. Gins..... 5,471.36
Alcoholic Content by Volume..... 1,735.68
Product of Canada
~~Not Subject to Excise Tax~~
Manufactured and Bottled in Bond in Vancouver, B.C.
~~Age of Spirits—No Age~~
~~U.S. Permit No. D-208~~
Glass Value $630.99

Cases marked: Import by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destiladores S.A.
MMX Havana, Cuba.

NOTIFY: R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.

PACKAGES LEAVE OUR PLANT IN GOOD ORDER. WE ARE NOT RESPONSIBLE FOR ANY LEAKAGE OR LOSS AFTER LEAVING US.

Defendant Klein Exhibit AY

513

For use in connection with the Form of Order Bill of Lading approved by the Board of Transport Commissioners for Canada by Order No. 7982 of 15th July, 1938. (Form 9A)

CANADIAN PACIFIC RAILWAY COMPANY

11258 B

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

Shipper's No. _____

Agent's No. _____ 37

Defendant Klein Exhibit AY

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the goods described in the Original Bill of Lading,

at Marpole, B.C. June 21st 1944

from United Distillers Limited for Duncan ~~HW~~ Harwood & Co. Ltd.,

the goods described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said goods over all or any portion of said route to destination, and as to each party at any time interested in all or any of said goods, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the goods. Inspection of goods covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

The Rate of Freight from Marpole, B C.

to New York City, N.Y. is in Cents per 100 Lbs.

If ____ Times 1st	If ____ Class	If ____ Class	If ____ Class	If ____ Class	If ____ Class	If ____ Class	If ____ Class	If ____ Class	If ____ Class	If ____ Class	If Special Per ____

(Mail Address—Not for purposes of Delivery)

Consigned to ORDER OF Chase National Bank, New York, N.Y. for a/c of Agencias Destilladores S.A. - Havana, Cuba.

Destination New York City Province or State of N.Y. County of _____

Notify R. C. Williams & Co. Inc., 265 - 10th Avenue

At New York City Province or State of N.Y. County of _____

Route V&LI BCKR CPR to Hamilton TRAS to Welland MC NYC to destination Car Initial C.P. Car No. 178449

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Rate	Check Column
1600 cs.	Harwood's Blended Canadian Whiskey	52,800		
	5ths Bracing	75		
		52,875		
	FREIGHT COLLECT IN BOND SHIPMENT C.N. GOV'T. PERMIT NO. 155 Seals 8505029-30 U.S. Permit No. ~~XXXXX~~ 2-I-29			
	Loaded in accordance with Sec. 3 (C) of TC Order No. 04F			
	To be cleared by C.J. Tower & Sons, Niagara Falls, Ont.			
	This shipment is correctly described. Correct weight is 52875 lbs. Subject to verification by the Canadian Freight Assn. (Western Lines) in accordance with Agency No. 1047 [signature]			

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The Signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

UNITED DISTILLERS LIMITED for Duncan Harwood & Co. Ltd. Shipper

Per _____

W R Culbert Agent

Per _____

Printed in Canada

CONDITIONS

SEC. 1. The Carrier of any of the goods herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided.

SEC. 2. In the case of shipments from one point in Canada to another point in Canada, or where goods are shipped under a joint tariff, the Carrier issuing this bill of lading, in addition to its other liability hereunder, shall be liable for any loss, damage, or injury to such goods from which the other Carrier is not by the terms of this bill of lading relieved, caused by or resulting from the act, neglect or default of any other Carrier to which such goods may be delivered in Canada, or under such joint tariff or over whose line or lines such goods may pass in Canada or under such joint tariff, the onus of proving that such loss was not so caused or did not so result being upon the Carrier issuing this bill of lading. The Carrier issuing this bill of lading shall be entitled to recover from the other Carrier on whose line or lines the loss, damage, or injury to the said goods shall have been sustained the amount of such loss, damage, or injury as it may be required to pay hereunder, as may be evidenced by any receipt, judgment, or transcript thereof. Nothing in this section shall deprive the holder of this bill of lading or party entitled to the goods of any remedy or right of action which he may have against the Carrier issuing this bill of lading or any other Carrier.

SEC. 3. The Carrier shall not be liable for loss, damage, or delay to any of the goods herein described, caused by the act of God, the King's or public enemies, riots, strikes, defect, or inherent vice in the goods, or the act or default of the shipper or owner; for differences in weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights when the elevators are not operated by the Carrier, unless the weights are evidenced by Government certificate; the authority of law or by quarantine. For loss, damage, or delay, except where cartage is to be performed by the Carrier or its agents, caused by fire occuring after forty-eight hours (exclusive of legal holidays), or in the case of bonded goods seventy-two hours (exclusive of legal holidays), after written notice of the arrival of said goods at destination or at port of export (if intended for export and not covered by a through bill of lading) has been sent or given, the Carrier's liability shall be that of warehouseman only. Except in case of negligence of the Carrier (and the burden of proving freedom from such negligence shall be on the Carrier), the Carrier shall not be liable for loss, damage, or delay occurring while the goods are stopped and held in transit upon the request of the party entitled to make such request. When in accordance with general custom, on account of the nature of the goods, or at the request of the shipper, the goods are transported in open cars, the Carrier (except in case of loss or damage by fire, in which case the liability shall be the same as though the goods had been carried in closed cars) shall be liable only for negligence, and the burden of proving freedom from such negligence shall be on the Carrier.

SEC. 4. No Carrier is bound to transport said goods by any particular train or vessel, or in time for any particular market or otherwise than as required by law, unless by specific agreement endorsed hereon. Every Carrier in case of physical necessity shall have the right to forward said goods by any railway or route between the point of shipment and the point of destination; but if such diversion be from a rail to a water route the liability of the Carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any Carrier is liable shall be computed on the basis of the value of the goods at the place and time of shipment under this bill of lading (including the freight and other charges if paid, and the duty if paid or payable and not refunded), unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariff upon which the rate is based, in any of which events such lower value shall be the amount to govern such computation; whether or not such loss or damage occurs from negligence.

When under the terms of the classification or special reduced tariffs, the goods are carried at owner's risk, such conditions are intended to cover only such risks as are necessarily incidental to transportation and shall not relieve the Carrier from liability for any loss, damage or delay which may result from any negligence or omission of the Carrier, its agents or employees, and the burden of proving freedom from such negligence or omission shall be on the Carrier.

Notice of loss, damage or delay must be made in writing to the Carrier at the point of delivery, or to the Carrier at the point of origin, within four months after delivery of the goods, or in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless notice is so given the Carrier shall not be liable.

Any Carrier or party liable on account of loss of or damage to any of said goods, on reimbursing to the insured the premiums paid in respect thereof, shall have the full benefit of any insurance that may have been effected upon or on account of said goods, so far as this shall not avoid the policies or contracts of insurance.

SEC. 5. Grain in bulk consigned to a point where the Carrier has an elevator or warehouse, or where there is a public or licensed elevator or warehouse, may be there delivered and placed with other grain of the same kind and grade without respect to ownership: Provided that this shall not apply to a point of final delivery if it is otherwise expressly noted hereon, unless the grain is not promptly unloaded after written notice of arrival has been sent or given to the person named herein. Grain so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 6. Goods not removed by the party entitled to receive them within forty-eight hours (exclusive of legal holidays), or in the case of bonded goods, within seventy-two hours (exclusive of legal holidays), after written notice has been sent or given, may be kept in car, station, or place of delivery or warehouse of the Carrier, subject to a reasonable charge for storage and to the Carrier's responsibility as warehouseman only, or may at the option of the Carrier (after written notice of the Carrier's intention to do so has been sent or given), be removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the risk of the owner and without liability on the part of the Carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

Goods in carloads shipped from a private siding or a station, wharf, or landing, where there is no duly authorized agent, shall be at the risk of the owner until the car is lifted or bill of lading is issued by the Carrier, and thereafter, shall be at the risk of the Carrier. Goods in carloads destined to a private siding, or station, wharf, or landing, where there is no duly authorized agent, shall be at the risk of the Carrier until placed on the delivery siding.

All goods shall be subject to necessary cooperage and baling at owner's cost.

SEC. 7. No Carrier shall be bound to carry any documents, specie, or any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so (the duty of obtaining such special agreement to be on the Carrier when the nature of such goods is disclosed herein) and a stipulated value of the articles are endorsed hereon. If such goods are carried without a special agreement and the nature of the goods is not disclosed hereon the Carrier shall not be liable for any loss or damage thereto.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said goods, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the goods shipped are not those described in this bill of lading, the freight charges must be paid upon the goods actually shipped, with any additional penalties lawfully payable thereon.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in Section 4 hereof, and except as provided hereafter, if all or any part of said goods is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statute or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lake, sea, or other waters; or from explosion, bursting of boilers, or breakage of shafts not arising from the negligence of the Carrier, or from any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation or from prolongation of the voyage. And any vessel carrying any or all of the goods herein described shall be at liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or goods.

The term "water carriage" in this section shall not be construed as including lighterage or car ferriage across rivers, or in lake or other harbors, and the liability for such lighterage or car ferriage shall be governed by the other sections hereof.

If the goods are being carried under a tariff which provides that any Carrier or Carriers party thereto shall be liable for loss from perils of the sea, then as to such Carrier or Carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

SEC. 10. Every party, whether principal or agent, shipping explosives or dangerous goods without previous full written disclosure to the Carrier or its agent of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense, or destroyed without compensation.

SEC. 11. Any alteration, addition or erasure in this bill of lading shall be signed or initialed in the margin by an agent of the Carrier issuing the same, and if not so signed or initialed shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Duncan Harwood and Company Limited

Duncan Harwood and Company Limited

DATE June 21st, 1944.

Vancouver, Canada

YOUR REQ NO

OUR ORDER NO

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

IN BOND SHIPMENT
FREIGHT COLLECT

INVOICE NO

ADDRESS

Car No. CP 178449

TERMS

SHIPPED VIA V&LI BCER CPR to Hamilton TH&B to Welland MC NYC to destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per case	AMOUNT	DUTY Wine Gls. per Cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	5ths	$ 8.05	$12,880.00	2.40	
						$ 12,880.00
						U. S. Funds

Weight of glass - All U.S.....19,200.00 Lbs.
Total U.S. Wine Glns..... 3,840.00
Total U.S. Pf. Glns..... 3,471.36
Alcoholic Content by Volume..... 1,735.68
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in Bond in Vancouver, B.C.
Age of Spirits - No Age
U.S. Permit No. XXXXX 2-I-29
Glass Value $639.99

Cases marked: Import by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.
Havana, Cuba.

NOTIFY: R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.

PACKAGES LEAVE OUR PLANT IN GOOD ORDER. WE ARE NOT RESPONSIBLE FOR ANY LEAKAGE OR LOSS AFTER LEAVING US

Defendant Klein Exhibit AY

Duncan Harwood and Company Limited

Vancouver, Canada

DATE June 21st, 1944.

YOUR REQ NO

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

OUR ORDER NO

IN BOND SHIPMENT
FREIGHT COLLECT

ADDRESS

INVOICE NO

C.P.
Car No. 178448

TERMS

SHIPPED VIA VALI BOER CPR to Hamilton THAB to Welland MC NYC to destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per Case	AMOUNT	DUTY Wine Gins. per Cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	5ths	$ 8.05	$12,880.00	2.40	
						$ 12,880.00
						U. S. Funds

Weight of glass - All U.S.....19,200.00 Lbs.
Total U.S. Wine Gins..... 3,840.00
Total U.S. Pf. Gins..... 3,471.36
Alcoholic Content by Volume..... 1,735.68
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in Bond in Vancouver, B.C.
Age of Spirits - No Age
U.S. Permit No. XXXXX 2-I-29
Glass Value $639.99

Cases marked: Import by:
R.J. Williams & Co. Inc.,
865 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.
Havana, Cuba.

NOTIFY: R.C. Williams & Co. Inc.,
865 - 10th Avenue,
New York City, N.Y.

PACKAGES LEAVE OUR PLANT IN GOOD ORDER. WE ARE NOT RESPONSIBLE FOR ANY LEAKAGE OR LOSS AFTER LEAVING US

CERTIFICATE OF AGE AND ORIGIN

Defendant Klein Exhibit AY

Defendant Klein Exhibit AY

CERTIFICATE OF AGE AND ORIGIN

I, EDWARD JAMES MORGAN of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FIRST day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & COMPANY INCORPORATED NEW YORK CITY, NEW YORK, U.S.A. via the port of VANCOUVER, B. C. Whisky, marked:

HARWOODS BLENDED CANADIAN WHISKEY 26 2/3 qr.

1943 6/44 1600 Cases ea. 2.00----3200.00 Glns. 20.8 2534.40 11.00 27,878.40
Ex 86

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was distilled in the year 1943 and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. VALI BOER & CPR TO HAMILTON THEN TO WELLAND H C TO SUSPENSION BRIDGE TO DESTINATION

Car No.

Shipping marks: R. C. WILLIAMS & COMPANY INCORPORATED
NEW YORK CITY
NEW YORK, U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 21 1944
DISTILLERY No 2

E J Morgan

For use in connection with the Form of Order Bill of Lading approved by the Board of Transport Commissioners for Canada by Order No. 7962 of 15th July, 1938. (Form 9A)

CANADIAN PACIFIC RAILWAY COMPANY

CAN. PAC. RLY. CO.
JUN 26 1944
MARPOLE, B.C.

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

Shipper's No. 1
Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the goods described in the Original Bill of Lading

at Marpole, B.C. June 25 1944

from United Distillers Limited for Duncan Harwood & Co. Ltd.,

the goods described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said goods over all or any portion of said route to destination, and as to each party at any time interested in all or any of said goods, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the goods. Inspection of goods covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

The Rate of Freight from Marpole, B.C.

to ~~New York City, N.Y.~~ is in Cents per 100 Lbs.

If ___ Times 1st	If ___ Class	If ___ Class	If ___ Class	If ___ Class	If ___ Class	If ___ Class	If ___ Class	If ___ Class	If ___ Class	If ___ Class	If Special Per ___

(Mail Address—Not for purposes of Delivery)

Consigned to ORDER OF Chase National Bank, New York, N.Y. for a/c of Agencias Destilladores S.A.

Destination Atlanta Province or State of Georgia County of

Notify R.C. Williams & Co. Inc., 265 -10th Ave., New York, N.Y. for a/c of National Distributing Co. 383-9 Marietta St., N.W. Atlanta, Georgia

At Atlanta Province or State of Georgia County of

Route VALI BOHR CP to Emerson SOO to Chicago WABASH to St. Louis, L&N to Destination Car Initial CP Car No. 174851

No. Packages	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	Class or Rate	Check Column
1600 cs.	Harwood's Blended Canadian Whiskey	52,800		
	9ths			
	Bracing	75		
		52,875		
	FREIGHT COLLECT			
	IN BOND SHIPMENT			
	CAN. GOV'T. PERMIT NO. 159			
	Seals 8505083-34			
	U.S. Permit No. XXXX 2-I-29			
	Loaded in accordance with Sec. 3 (C) of TC Order No. 04F			
	To be cleared by W.F. McKay, Noyes, Minnesota			
	This shipment is correctly described; Correct weight is 52875 lbs. Subject to verification by the Canadian Freight Assn. (Western Lines), in accordance with Agreement No. 1044.			

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ ___ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per ___
(The Signature here acknowledges only the amount prepaid.)

Charges Advanced:

$ ___

UNITED DISTILLERS LIMITED for Duncan

Agent

Defendant Klein Exhibit AY

CONDITIONS

SEC. 1. The Carrier of any of the goods herein described shall be liable for any loss thereof or damage thereto except as hereinafter provided.

SEC. 2. In the case of shipments from one point in Canada to another point in Canada, or where goods are shipped under a joint tariff, the Carrier issuing this bill of lading, in addition to its other liability hereunder, shall be liable for any loss, damage, or injury to such goods from which the other Carrier is not by the terms of this bill of lading relieved, caused by or resulting from the act, neglect or default of any other Carrier to which such goods may be delivered in Canada, or under such joint tariff or over whose line or lines such goods may pass in Canada or under such joint tariff, the onus of proving that such loss was not so caused or did not so result being upon the Carrier issuing this bill of lading. The Carrier issuing this bill of lading shall be entitled to recover from the other Carrier on whose line or lines the loss, damage, or injury to the said goods shall have been sustained the amount of such loss, damage, or injury as it may be required to pay hereunder, as may be evidenced by any receipt, judgment, or transcript thereof. Nothing in this section shall deprive the holder of this bill of lading or party entitled to the goods of any remedy or right of action which he may have against the Carrier issuing this bill of lading or any other Carrier.

SEC. 3. The Carrier shall not be liable for loss, damage, or delay to any of the goods herein described, caused by the act of God, the King's or public enemies, riots, strikes, defect, or inherent vice in the goods, or the act or default of the shipper or owner; for differences in weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights when the elevators are not operated by the Carrier, unless the weights are evidenced by Government certificate; the authority of law or by quarantine. For loss, damage, or delay, except where cartage is to be performed by the Carrier or its agents, caused by fire occuring after forty-eight hours (exclusive of legal holidays), or in the case of bonded goods seventy-two hours (exclusive of legal holidays), after written notice of the arrival of said goods at destination or at port of export (if intended for export and not covered by a through bill of lading) has been sent or given, the Carrier's liability shall be that of warehouseman only. Except in case of negligence of the Carrier (and the burden of proving freedom from such negligence shall be on the Carrier), the Carrier shall not be liable for loss, damage, or delay occurring while the goods are stopped and held in transit upon the request of the party entitled to make such request. When in accordance with general custom, on account of the nature of the goods, or at the request of the shipper, the goods are transported in open cars, the Carrier (except in case of loss or damage by fire, in which case the liability shall be the same as though the goods had been carried in closed cars) shall be liable only for negligence, and the burden of proving freedom from such negligence shall be on the Carrier.

SEC. 4. No Carrier is bound to transport said goods by any particular train or vessel, or in time for any particular market or otherwise than as required by law, unless by specific agreement endorsed hereon. Every Carrier in case of physical necessity shall have the right to forward said goods by any railway or route between the point of shipment and the point of destination; but if such diversion be from a rail to a water route the liability of the Carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any Carrier is liable shall be computed on the basis of the value of the goods at the place and time of shipment under this bill of lading (including the freight and other charges if paid, and the duty if paid or payable and not refunded), unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariff upon which the rate is based, in any of which events such lower value shall be the amount to govern such computation, whether or not such loss or damage occurs from negligence.

When under the terms of the classification or special reduced tariffs, the goods are carried at owner's risk, such conditions are intended to cover only such risks as are necessarily incidental to transportation and shall not relieve the Carrier from liability for any loss, damage or delay which may result from any negligence or omission of the Carrier, its agents or employees, and the burden of proving freedom from such negligence or omission shall be on the Carrier.

Notice of loss, damage or delay must be made in writing to the Carrier at the point of delivery, or to the Carrier at the point of origin within four months after delivery of the goods, or in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless notice is so given the Carrier shall not be liable.

Any Carrier or party liable on account of loss of or damage to any of said goods, on reimbursing to the insured the premiums paid in respect thereof, shall have the full benefit of any insurance that may have been effected upon or on account of said goods, so far as this shall not avoid the policies or contracts of insurance.

SEC. 5. Grain in bulk consigned to a point where the Carrier has an elevator or warehouse, or where there is a public or licensed elevator or warehouse, may be there delivered and placed with other grain of the same kind and grade without respect to ownership: Provided that this shall not apply to a point of final delivery if it is otherwise expressly noted hereon, unless the grain is not promptly unloaded after written notice of arrival has been sent or given to the person named herein. Grain so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

SEC. 6. Goods not removed by the party entitled to receive them within forty-eight hours (exclusive of legal holidays), or in the case of bonded goods, within seventy-two hours (exclusive of legal holidays), after written notice has been sent or given, may be kept in car, station, or place of delivery or warehouse of the Carrier, subject to a reasonable charge for storage and to the Carrier's responsibility as warehouseman only, or may at the option of the Carrier (after written notice of the Carrier's intention to do so has been sent or given), be removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the risk of the owner and without liability on the part of the Carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

Goods in carloads shipped from a private siding or a station, wharf, or landing, where there is no duly authorized agent, shall be at the risk of the owner until the car is lifted or bill of lading is issued by the Carrier, and thereafter, shall be at the risk of the Carrier. Goods in carloads destined to a private siding, or station, wharf, or landing, where there is no duly authorized agent, shall be at the risk of the Carrier until placed on the delivery siding.

All goods shall be subject to necessary cooperage and baling at owner's cost.

SEC. 7. No Carrier shall be bound to carry any documents, specie, or any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so (the duty of obtaining such special agreement to be on the Carrier when the nature of such goods is disclosed herein) and a stipulated value of the articles are endorsed hereon. If such goods are carried without a special agreement and the nature of the goods is not disclosed hereon the Carrier shall not be liable for any loss or damage thereto.

SEC. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said goods, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the goods shipped are not those described in this bill of lading, the freight charges must be paid upon the goods actually shipped, with any additional penalties lawfully payable thereon.

SEC. 9. Except in case of diversion from rail to water route, which is provided for in Section 4 hereof, and except as provided hereafter, if all or any part of said goods is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statute or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lake, sea, or other waters; or from explosion, bursting of boilers, or breakage of shafts not arising from the negligence of the Carrier, or from any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation or from prolongation of the voyage. And any vessel carrying any or all of the goods herein described shall be at liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or goods.

The term "water carriage" in this section shall not be construed as including lighterage or car ferriage across rivers, or in lake or other harbors, and the liability for such lighterage or car ferriage shall be governed by the other sections hereof.

If the goods are being carried under a tariff which provides that any Carrier or Carriers party thereto shall be liable for loss from perils of the sea, then as to such Carrier or Carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

SEC. 10. Every party, whether principal or agent, shipping explosives or dangerous goods without previous full written disclosure to the Carrier or its agent of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense, or destroyed without compensation.

SEC. 11. Any alteration, addition or erasure in this bill of lading shall be signed or initialed in the margin by an agent of the Carrier issuing the same, and if not so signed or initialed shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Duncan Harwood and Company Limited

DATE June 26th, 1944.

Vancouver, Canada

YOUR REQ NO

OUR ORDER NO

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

ADDRESS

IN BOND SHIPMENT
FREIGHT COLLECT

INVOICE NO

Car No. CP 174931

TERMS

SHIPPED VIA V&LI BCER CP to Emerson SOO to Chicago, WABASH to St. Louis, L&N to Destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per cs.	AMOUNT	DUTY Wine Glns. per cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	5ths	$ 8.05	$12,880.00	2.40	
						$ 12,880.00

U. S. Funds

Weight of glass - All U.S..... 19,200 Lbs.
Total U.S. Wine Glns..... 3,840.0
Total U. S. Pf. Glns..... 3,471.36
Alcoholic Content by Volume..... 1,735.68
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in bond in Vancouver, B.C.
Age of Spirits - No age
U.S.Permit No. 2-I-29
Glass Value $639.99

Cases marked: Imported by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.
Havana, Cuba.

NOTIFY: R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
for a/c of National Distributing Co.,
353-9 Marietta St., N.W.,
Atlanta, Georgia.

PACKAGES LEAVE OUR PLANT IN GOOD ORDER WE ARE NOT RESPONSIBLE FOR ANY LEAKAGE OR LOSS AFTER LEAVING US

Duncan Harwood and Company Limited

Defendant Klein Exhibit AY

Duncan Harwood and Company Limited

DATE June 26th, 1944.

Vancouver, Canada

YOUR REQ NO

OUR ORDER NO

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

IN BOND SHIPMENT
FREIGHT COLLECT

INVOICE NO

ADDRESS

Car No. CP 174931

TERMS

SHIPPED VIA V&LI BCER CP to Emerson SOO to Chicago, WABASH to St. Louis, L&N to Destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per cs.	AMOUNT	DUTY Wine Glns. per cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	5ths	$ 8.05	$12,880.00	2.40	
						$ 12,880.00
						U. S. Funds

Weight of glass - All U.S. ..... 19,200 Lbs.
Total U.S. Wine Glns. 3,840.0
Total U. S. Pf. Glns. 3,471.36
Alcoholic Content by Volume 1,735.68
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in bond in Vancouver, B.C.
Age of Spirits - No age
U.S.Permit No. D-I-29
Glass Value $639.99

Cases marked: Imported by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.
Havana, Cuba.

NOTIFY: R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
for a/c of National Distributing Co.,
363-9 Marietta St., N.W.,
Atlanta, Georgia.

PACKAGES LEAVE OUR PLANT IN GOOD ORDER WE ARE NOT RESPONSIBLE FOR ANY LEAKAGE OR LOSS AFTER LEAVING US

Defendant Klein Exhibit 4Y

Form 7 194 7-43

CERTIFICATE OF AGE AND ORIGIN

I, [redacted] of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FOURTH day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & CO., INC. A/C NATIONAL DISTRIBUTING CO. N. W. ATLANTA, GEORGIA, U.S.A. via the port of VANCOUVER, B. C.

Whisky, marked:

[redacted]

1943 6/44 1000 Cases ca. 2.00----[redacted] Glns. [redacted] [redacted] Proof Glns.
Ex 07

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was distilled in the year [redacted] 1943 [redacted] and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for [redacted] exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. CPR to Emerson 800 to Chicago Wabash to St. Louis [redacted] to destination

Car No.

Shipping marks: IMPORTED BY---- R. C. Williams & Company Incorporated
265 10th Avenue
New York City, N.Y.
Sole agents for U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 24 1944

3. Shipper should be instructed to declare the name of the manufacturer whenever possible.
4. If the declaration is believed to be incorrect or incomplete, or if consul believes that the goods are liable to detention, should note such information on the invoice in the consular corrections or remarks column.

[redacted]

JUN 28 1944

Duncan Harwood and Company Limited

Defendant Klein Exhibit AY

DATE June 26th, 1944.

Vancouver, Canada

YOUR REQ NO

OUR ORDER NO

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

ADDRESS

IN BOND SHIPMENT
FREIGHT COLLECT

INVOICE NO

Car No. CP 174931

TERMS

SHIPPED VIA WALI BCER CP to Emerson 300 to Chicago, WABASH to St. Louis, L&N to Destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per Cs.	AMOUNT	DUTY Wine Glns. per Cs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	8ths	$ 8.05	$12,880.00	2.40	
						$ 12,880.00
						U. S. Funds

Weight of glass - All U.S.....19,200 Lbs.
Total U.S. Wine Glns..... 3,840.0
Total U. S. Pf. Glns..... 3,471.36
Alcoholic Content by Volume..... 1,735.68
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in bond in Vancouver, B.C.
Age of Spirits - No age
U.S.Permit No. S-I-89
Glass Value $639.99

Cases marked: Imported by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.
Havana, Cuba.

NOTIFY: R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
for a/c of National Distributing Co.,
353-9 Marietta St., N.W.,
Atlanta, Georgia.

PACKAGES LEAVE OUR PLANT IN GOOD ORDER. WE ARE NOT RESPONSIBLE FOR ANY LEAKAGE OR LOSS AFTER LEAVING US

Duncan Harwood and Company Limited

DATE June 26th, 1944.

Vancouver, Canada

YOUR REQ NO

OUR ORDER NO

SOLD TO Agencias Destilladores S.A.,
Aguiar 411,
Havana, Cuba.

IN BOND SHIPMENT
FREIGHT COLLECT

ADDRESS

INVOICE NO

Car No. GP 174931

TERMS

SHIPPED VIA WALI RCER CP to Emerson 300 to Chicago, WABASH to St. Louis, L&N to Destination

NO. OF PACKAGES	DESCRIPTION	SIZE	PRICE per Gls.	AMOUNT	DUTY Wine Gins. per gs.	TOTAL
1600 cs.	Harwood's Blended Canadian Whiskey	5ths	$ 8.05	$12,880.00	2.40	
						$ 12,880.00
						U. S. Funds

Weight of glass - All U.S.....19,200 Lbs.
Total U.S. Wine Glns.....3,840.0
Total U. S. Pf. Glns.....3,471.36
Alcoholic Content by Volume.....1,735.68
Product of Canada
Not Subject to Sales Tax
Manufactured and Bottled in bond in Vancouver, B.C.
Age of Spirits - No age
U.S.Permit No. 2-I-29
Glass Value $639.99

Cases marked: Imported by:
R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
Sole Agents for U.S.A.

CONSIGNED TO THE ORDER OF: Chase National Bank, New York, N.Y.
for a/c of Agencias Destilladores S.A.
Havana, Cuba.

NOTIFY: R.C. Williams & Co. Inc.,
265 - 10th Avenue,
New York City, N.Y.
for a/c of National Distributing Co.,
353-9 Marietta St., N.W.,
Atlanta, Georgia.

PACKAGES LEAVE OUR PLANT IN GOOD ORDER — WE ARE NOT RESPONSIBLE FOR ANY LEAKAGE OR LOSS AFTER LEAVING US

Defendant Klein Exhibit AY

Form No. 169
FOREIGN SERVICE
(Revised March 1939)

DECLARATION OF SHIPPER OF FOOD, DRUG, AND COSMETIC PRODUCTS

Regarding shipment covered by Invoice No. 5170, *certified at* Vancouver, B.C.,

....., *on* June 23, 1944.
(Date)

I, the undersigned, am the Duly Authorized Attorney for the Seller
(Shipper or Seller or Agent of Shipper or Seller)
of the merchandise mentioned and described in the accompanying consular invoice. It consists of food, drug, or cosmetic products (or devices as defined by the Federal Food, Drug, and Cosmetic Act) which contain no added substance injurious to health. These products were grown in Canada
(Country)
and manufactured in Vancouver, B. C.
(Town and country)
by United Distillers Limited
(Name of manufacturer)
during the year 1944, and are exported from Vancouver, B. C.
(City)
and consigned to New York City, New York.
(City)
They bear no false labels or marks, contain no added coloring matter except None
(State coloring matter used, if any)
no preservative (salt, sugar, vinegar, or wood smoke excepted) except None
(State preservatives used, if any)

I further declare that such article or articles are not of such a character as to prohibit their entry into the United States in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act in that they have not been manufactured, processed, or packed under insanitary conditions, nor are they of a character to cause prohibition or restriction in sale in the country where made or from which exported, nor are they adulterated or misbranded, nor are they in violation of section 505 of the Federal Food, Drug, and Cosmetic Act.

I further declare that the drug products herein mentioned and described contain no opium, coca leaves, cocaine, or any salt, derivative or preparation of opium, coca leaves, or cocaine, the importation of which into the United States is prohibited by the Narcotic Drugs Import and Export Act, as amended.

I do solemnly and truly declare the foregoing statements to be true, to the best of my knowledge and belief.

Dated at Vancouver, B.C. (Place) this 23rd

day of June, 1944.
(Month) (Year)

UNITED DISTILLERS LIMITED.
PER DENNY [illegible] BARNES ATTY.
(Signature) [signature] ATTY.

INSTRUCTIONS TO CONSULAR OFFICERS

1. This declaration is to be firmly attached to all copies of consular invoices covering shipment of over $100 in value.
2. The official seal must be placed on the declaration, and the number, date of certification of invoice, and name of post plainly indicated.
3. Shipper should be instructed to declare the name of the manufacturer whenever possible.
4. If the declaration is believed to be incorrect or incomplete, or if consul believes that the goods are liable to detention, he should note such information on the invoice in the consular corrections or remarks column.

U. S. GOVERNMENT PRINTING OFFICE 16—9220

Form No. 198
FOREIGN SERVICE
(Revised March 1939)

11058-B

DECLARATION OF SHIPPER OF FOOD, DRUG, AND COSMETIC PRODUCTS

Regarding shipment covered by Invoice No. 5170, *certified at* Vancouver, B.C.

, *on* June 23, 1944.
(Date)

I, the undersigned, am the Duly Authorized Attorney for the Seller
(Seller or owner, or agent of seller or owner)
of the merchandise mentioned and described in the accompanying consular invoice. It consists of food, drug, or cosmetic products (or devices as defined by the Federal Food, Drug, and Cosmetic Act) which contain no added substance injurious to health. These products were grown in Canada
(Country)
and manufactured in Vancouver, B. C. (Town and country) by United Distillers Limited (Name of manufacturer)
during the year 1944, and are exported from Vancouver, B. C. (City) and
consigned to New York City, New York. (City) They bear no false labels or marks, contain no
added coloring matter except None
(State coloring matter used, if any)
no preservative (salt, sugar, vinegar, or wood smoke excepted) except None
(State preservatives used, if any)

I further declare that such article or articles are not of such a character as to prohibit their entry into the United States in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act in that they have not been manufactured, processed, or packed under insanitary conditions, nor are they of a character to cause prohibition or restriction in sale in the country where made or from which exported, nor are they adulterated or misbranded, nor are they in violation of section 505 of the Federal Food, Drug, and Cosmetic Act.

I further declare that the drug products herein mentioned and described contain no opium, coca leaves, cocaine, or any salt, derivative or preparation of opium, coca leaves, or cocaine, the importation of which into the United States is prohibited by the Narcotic Drugs Import and Export Act, as amended.

I do solemnly and truly declare the foregoing statements to be true, to the best of my knowledge and belief.

Dated at Vancouver, B.C. (Place) this 23rd
day of June, 1944. (Month and year)

UNITED DISTILLERS LIMITED.
PER DENNISON & RAINES ATTY.
(Signature) [signature] ATTY.

INSTRUCTIONS TO CONSULAR OFFICERS

1. This declaration is to be firmly attached to all copies of consular invoice covering shipment of over $100 in value.
2. The official seal must be placed on the declaration, and the number, date of certification of invoice, and name of post plainly indicated.
3. Shipper should be instructed to declare the name of the manufacturer whenever possible.
4. If the declaration is believed to be incorrect or incomplete, or if consul believes that the goods are liable to detention, he should note such information on the invoice in the consular corrections or remarks column.

U. S. GOVERNMENT PRINTING OFFICE 16—[illegible]

Form No. 198
FOREIGN SERVICE
(Revised March 1939)

DECLARATION OF SHIPPER OF FOOD, DRUG, AND COSMETIC PRODUCTS

Regarding shipment covered by Invoice No. 5170, *certified at* Vancouver, B.C.,
....., *on* June 23, 1944.
(Date)

I, the undersigned, am the duly authorized attorney for the Seller
(Seller or owner, or agent of seller or owner)
of the merchandise mentioned and described in the accompanying consular invoice. It consists of food, drug, or cosmetic products (or devices as defined by the Federal Food, Drug, and Cosmetic Act) which contain no added substance injurious to health. These products were grown in Canada
(Country)
and manufactured in Vancouver, B.C.
(Town and country)
by United Distillers Limited
(Name of manufacturer)
during the year 1944, and are exported from Vancouver, B.C.
(City)
and consigned to New York City, New York. They bear no false labels or marks, contain no added coloring matter except None
(State coloring matter used, if any)
no preservative (salt, sugar, vinegar, or wood smoke excepted) except None
(State preservatives used, if any)

I further declare that such article or articles are not of such a character as to prohibit their entry into the United States in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act in that they have not been manufactured, processed, or packed under insanitary conditions, nor are they of a character to cause prohibition or restriction in sale in the country where made or from which exported, nor are they adulterated or misbranded, nor are they in violation of section 505 of the Federal Food, Drug, and Cosmetic Act.

I further declare that the drug products herein mentioned and described contain no opium, coca leaves, cocaine, or any salt, derivative or preparation of opium, coca leaves, or cocaine, the importation of which into the United States is prohibited by the Narcotic Drugs Import and Export Act, as amended.

I do solemnly and truly declare the foregoing statements to be true, to the best of my knowledge and belief.

Dated at Vancouver, B.C.
(Place)
this 23rd day of June, 1944.
(Month and year)

(Signature) [illegible]

INSTRUCTIONS TO CONSULAR OFFICERS

1. This declaration is to be firmly attached to all copies of consular invoice covering shipment of over $100 in value.
2. The official seal must be placed on the declaration, and the number, date of certification of invoice, and name of post plainly indicated.
3. Shipper should be instructed to declare the name of the manufacturer whenever possible.
4. If the declaration is believed to be incorrect or incomplete, or if consul believes that the goods are liable to detention, he should note such information on the invoice in the consular corrections or remarks column.

U. S. GOVERNMENT PRINTING OFFICE 16—6320

Form 142
FOREIGN REVISION
(Revised August 1941)

—Attach Additional Sheets Here—

X1058 B.

37

INVOICE OF MERCHANDISE

(Before preparing this invoice, read instructions carefully)

(1) PURCHASED ☒ (1) NOT PURCHASED ☐

(Do not include PURCHASED and NOT PURCHASED merchandise in ONE invoice; use SEPARATE invoice for each)

Vancouver, B.C. June 23, 1944.
(Place and date)

Invoice of 1600 cs. Canadian Whiskey. (Merchandise) (2) {purchased / agreed to be purchased} from or shipped by Vancouver, B.C. of

(3) United Distillers, Ltd. (Seller or consignor)

by {sold / shipped} to H. H. Williams Co. Inc. (Purchaser or consignee) of New York, New York. (Address)

(4) { as per order accepted June 1944. (Date)
for the account of Agencias Destiladores (Name) of Habana, Cuba. (Address)

to be shipped per Freight — B. & O. and connections. Destination - Atlanta, Geo. (Carrier)

(5) Marks and Numbers on Shipping Packages	(6) Manufacturer's or Seller's Numbers or Symbols	(7) Importer's Numbers or Symbols	(8) Quantities and Full Description of Goods (N. B.—Always state the cost of packing, and all other costs, charges, and expenses)	(9) Invoice Unit (See questions below)	(10) Invoice Total	(11) Currency (Home consumption or export) Per Unit
	1600 cs.		Canadian Whiskey 1/5ths 3471.36 Bd. of Stamps & Export	8.05	$12,880.00 5.80 $12,885.80	$8.05

Freight collect. approximate freight $1,742.40
Cost Vancouver, B.C.
Weight of Case 13.00. Value Class 2639.98
Product of Canada. Duty paid in Vancouver, B.C.
Validation fee $06.00 included above. Not subject to sales tax.
Or drawback of duty on export. Total wine gals 3840.00
Gallonage 2738.88 volume. Net Liters 2.60 included above. Full revenue
charge $6,000 purchased in New York, N. Y. May 5, 1944. Liquidation Nile.
Duty and sales tax payable in Canada not included above 11.00 Can. per
Imp. Wine Gal. of 2534.40 Value plus 8 sales tax on duty paid value. We hay
or liquor used in mixings. We offer to give free music permit 2-I-29. We hereby
certify the purchase price shown on this invoice (column 10) 2-I-29 is full price and
correct. The purchaser has the right to import such liquors.

Is this merchandise shipped in pursuance of a purchase or an agreement to purchase? yes (Yes or No)

If answer to preceding question is "Yes," have you entered as item 9 the purchase price of each item in the currency of purchase? yes (Yes or No)

Is this merchandise shipped otherwise than in pursuance of a purchase or an agreement to purchase? no (Yes or No) If answer is "Yes," indicate below whether you have entered as item 9 the present value for each item in the currency in which the transactions are usually made: (a) the value for home consumption including all applicable taxes in the country of exportation; or (b) the export value to the United States if higher; or (c) in the absence of the foreign value and the export value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive for such merchandise if sold in the ordinary wholesale quantities in the country of exportation; or (d) in the absence of all of the foregoing, the cost of production.

(State whether (a), (b), (c), or (d) is applicable)

Is the currency, entered as item 9, gold, silver, or paper? Paper (State which)

Have you enumerated all charges and stated whether each amount has been included in or excluded from the above invoice amounts? yes (Yes or No) If the inland freight is included in the invoice price or value, is the price or value of the merchandise the same at the factory as at the point of delivery? none (Yes or No)

Have you separately itemized all rebates, drawbacks, bounties, or other grants allowed upon the exportation of the merchandise? yes (Yes or No)

Is such or similar merchandise offered or sold in the home market for home consumption? yes If so, what taxes are applicable? $11.00 per gallon on 2534.40 Imp. Pf. Gals 8% Sales Tax on Duty Paid Value (Rate and kind)

(When invoice is signed by an authorized agent the name of his principal must be shown.)

Signature of Seller or Shipper (Dennison & Mitchell, Mgrs.)

By (Authorized agent)

CONSULAR INVOICE OF MERCHANDISE

Invoice No. ..... Issued in { Triplicate / Quadruplicate

Certified June 21, 1944.

FOREIGN SERVICE OF THE UNITED STATES OF AMERICA AT

Vancouver, B. C.

Date June 21, 1944.

Seller / ~~Consignor~~ } United Distillers Ltd.

Vancouver, B.C.

Purchaser / ~~Consignee~~ } [illegible] Williams Co.

New York, New York.

Carrier [illegible] and (Vessel or railroad) associations.

Port of shipment Vancouver, B. C.

Destination of goods Atlanta, Georgia.

Port of arrival Niagara Falls, N.Y.

Port of entry Atlanta, Georgia.

Amount of invoice $12,[illegible].00

Kind of goods 1600 cs. Canadian hskey.

10—28731

DECLARATION OF SELLER OR SHIPPER, OR THE AGENT OF EITHER, WHEN MERCHANDISE IS SHIPPED IN PURSUANCE OF A PURCHASE OR AN AGREEMENT TO PURCHASE

I, We } I.e.

acting in the capacity described below, truly declare that I am the

of United [illegible]

is / are } the { seller / sellers } or { shipper / shippers } of the merchandise described in the within or attached invoice; that the merchandise is sold or agreed to be sold; that there is no other invoice differing from the within or attached invoice, and that all the statements contained herein and in such invoice are true and correct.

I / We } further declare that

shipment to be immediately.

and that it is intended to make entry of said merchandise at the port of Atlanta, Georgia

in the UNITED STATES OF AMERICA.

Dated at Vancouver, B. C. this 23rd day of June, 1944

[illegible] (Seller)

(Shipper)

[illegible] (Agent of seller)

(Agent of shipper)

CONSULAR CERTIFICATE
Form 140

(Date)

I do hereby certify that this invoice was this day produced to me by the signer of the above declaration.

I do further certify that I am satisfied that the person making the declaration above is the person he represents himself to be, and that a fee of $2.50 United States currency equal to ..... (Local currency), has been paid by affixing stamps to the original copy of this document.

Witness my hand and seal of office the day and year aforesaid.

..... of the UNITED STATES OF AMERICA.

DECLARATION OF SHIPPER OR HIS AGENT WHEN THE MERCHANDISE IS SHIPPED OTHERWISE THAN IN PURSUANCE OF A PURCHASE OR AN AGREEMENT TO PURCHASE

I, We, } .....

acting in the capacity described below, truly declare that .....

of .....

is / are } the { shipper / shippers } of the merchandise described in the within or attached invoice, that the merchandise is shipped otherwise than in pursuance of a purchase, or an agreement to purchase; that there is no other invoice differing from the within or attached invoice, and that all statements contained herein and in such invoice are true and correct.

I / We } further declare that .....

and that it is intended to make entry of said merchandise at the port of .....

in the UNITED STATES OF AMERICA.

Dated at ..... this ..... day of .....

(Shipper)

(Agent of shipper)

CONSULAR CERTIFICATE
Form 140

(Date)

I do hereby certify that this invoice was this day produced to me by the signer of the above declaration.

I do further certify that I am satisfied that the person making the declaration above is the person he represents himself to be, and that a fee of $2.50 United States currency equal to ..... (Local currency), has been paid by affixing stamps to the original copy of this document.

Witness my hand and seal of office the day and year aforesaid.

..... of the UNITED STATES OF AMERICA

PARTICULARS FOR CONSULAR INVOICE

Defendant Klein Exhibit AY

~~PARTICULARS FOR CONSULAR~~ INVOICE

Order of Chase National Bank New York .204 PERMIT NO.

SHIP TO: ~~[illegible]~~ Co.

VIA Account of Agencias Destilladas S.A., Notify: R. C. Williams & Co., Inc., 265-10th Avenue, New York City, N. Y.

ESTIMATED FREIGHT $1,742.40

For Account of: National Distributing Co. 353 -9 Marietta St., N.W. Atlanta, Georgia

WEIGHT OF GLASS (~~CANADIAN OR~~ U.S.) 19200 (19200) U.S.REV.STAMPS

U.S. WINE GALLONS 3840.00

U.S. PROOF GALLONS 3471.36

ALCOHOLIC CONTENT BY VOLUME 1735.68

Purchased in New York N.Y. May 5, 1944 Requisition 115

DATE OF SHIPMENT June 24/44

BASIC PERMIT NO. ~~[illegible]~~ 2I29 DATED

VALIDATION FEE ON 2534.40 IMPERIAL PF. GLS. $ 506.88

-Age 1943

~~no age~~

DETAILS OF SHIPMENT

VALUE	CASES	BRAND	SIZE	GROSS WEIGHT	PRICE	GLASS WEIGHT	TOTAL WINE GL.	U.S.PF. GLNS.	Alc. Cont. LABELS COST ETC.	
12,880.00	1600	Harwood Blended Co. whisky	5th	33 52.800	8.05	12 19.200	240 3840.00	3471.36	1735.68	1.60

Value of glass $639.99

ROUTING: BCER V&LI CP TO EMERSON, 200 TO CHICAGO, WABASH TO ST. LOUIS, L & N TO DESTINATION

~~Shippers~~

For Duncan Harwood & Co. Ltd.

Vancouver B.C.

12,88[illegible]
1,2[illegible]
14,165.[illegible]

Form [illegible]

CERTIFICATE OF AGE AND ORIGIN

I, [illegible] of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FOURTH day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & CO., INC. A/C NATIONAL DISTRIBUTING CO. N. W. ATLANTA, GEORGIA, U.S.A. via the port of VANCOUVER, B. C.

Whisky, marked:

HANNOCKS BLENDED CANADIAN WHISKEY 26 2/3oz.

1943 6/44 1600 Cases ca. 2.00----3200.00 Glns. 20.8 2336.40 Proof Glns.
Ex 87

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was dis[illegible] in the year 1943 and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for h[illegible] exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. CPR to Emerson 300 to Chicago Wabash to St. Louis L&N to destination

Car No.

Shipping marks: IMPORTED BY---- R. C. Williams & Company Incorporated
265 19th Avenue
New York City, N.Y.
Sole agents for U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE,
JUN 24 1944

Defendant Klein Exhibit AY

CERTIFICATE OF AGE AND ORIGIN

JUN 21 1944

CERTIFICATE OF AGE AND ORIGIN

Defendant Klein Exhibit AY

I, [redacted] of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the [redacted] day of [redacted] 19[redacted], the said United Distillers Limited, despatched to [redacted] via the port of [redacted]

Whisky, marked:

[redacted]

[redacted]

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, [redacted] and was distilled in the year [redacted] 1943 [redacted] and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for [redacted] exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. [redacted]

Car No.

Shipping marks: [redacted]

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE
JUN 21 1944
DISTILLERY No. 2
VANCOUVER B.C.

Form 7 184 45

CERTIFICATE OF AGE AND ORIGIN

I, EDMUND JAMES MORGAN of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FOURTH day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & CO., INC. A/C NATIONAL DISTRIBUTING CO. N. W. ATLANTA, GEORGIA, U.S.A. via the port of VANCOUVER, B. C. Whisky, marked:

HARWOODS BLENDED CANADIAN WHISKEY 26 2/3oz.

1943 6/44 Ex 87 1600 Cases ea. 2.00----3200.00 Glns. 20.8 2534.40 Proof Glns.

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was distilled in the year- ~~and kept in new oak containers in bond for at least~~ 1943 ~~years~~ and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for ~~home consumption~~ exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. CPR to Emerson SOO Chicago Wabash to St. Louis LAN to destination

Car No.

Shipping marks: IMPORTED BY----R. C. WILLIAMS & COMPANY INCORPORATED
265 10th AVENUE,
NEW YORK CITY, NEW YORK, U.S.A.
Sole agents for U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.

Defendant Klein Exhibit AY

CERTIFICATE OF AGE AND ORIGIN

CERTIFICATE OF [illegible]

I, EDWARD JAMES MORGAN of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FOURTH day of JUNE 19 44, the said United Distillers Limited, despatched to E. C. WILLIAMS & CO., INC. A/C NATIONAL DISTRIBUTING CO. N. W. ATLANTA, GEORGIA, U.S.A. via the port of VANCOUVER, B. C.

Whisky, marked:

HARWOODS BLENDED CANADIAN WHISKEY 26 2/3ozs.

1943 6/44 Ex 87 1600 Cases ea. 2.00----3200.00 Glns. 80.8 2534.40 Proof Glns.

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was distilled in the year 1943 and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. CPR to Emerson 800 Chicago Wabash to St. Louis L&N to destination

Car No.

Shipping marks: IMPORTED BY----E. C. WILLIAMS & COMPANY INCORPORATED
565 10th AVENUE,
NEW YORK CITY, NEW YORK, U.S.A.
Sole agents for U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE
JUN 21 1944
DISTILLERY No. 2
VANCOUVER B.C.

E. J. Morgan

Form 7 1M 7-43

CERTIFICATE OF AGE AND ORIGIN

I, [redacted] of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:—

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on the TWENTY FOURTH day of JUNE 1944, the said United Distillers Limited, despatched to R. C. WILLIAMS & CO., INC. A/S NATIONAL DISTRIBUTING CO., N. W. ATLANTA, GEORGIA, U.S.A. via the port of VANCOUVER, B. C.

Whisky, marked:

HARWOODS BLENDED CANADIAN WHISKEY 26 2/3oz.

1943 6/44 1600 Cases ea. 2.00----3200.00 Glns. 20.8 2534.40 Proof Glns.
Ex 87

said whisky being the product of the distillery of the said United Distillers Limited, situated at the said City of Vancouver, and was distilled in the year- [redacted] 1943 [redacted] and bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:—

(1) That the particular distilled spirits are Canadian whisky.

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whisky for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for [redacted] exportation.

(4) That none of the distilled spirits in the bottles are of an age less than that stated on the labels, and that this age is the period during which, after distillation and before bottling, the distilled spirits have been kept in new oak containers.

Consular Invoice No. CPR to Emerson 800 Chicago Wabash to St. Louis L&N to destination

Car No.

Shipping marks: IMPORTED BY----R. C. WILLIAMS & COMPANY INCORPORATED
265 10th AVENUE,
NEW YORK CITY, NEW YORK, U.S.A.
Sole agents for U.S.A.

National Revenue Canada
CUSTOMS AND EXCISE
EXCISE OFFICE.
JUN 24 1944

CERTIFICATE OF ORIGIN.

Defendant Klein Exhibit AY

Defendant Klein Exhibit 41

CERTIFICATE OF ORIGIN.

I, THOMAS H. STEELE of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:-

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on TWENTY FOURTH day of JUNE 1944, the said United Distillers Limited, despatched to R.C. WILLIAMS & CO.INC. A/C NATIONAL DISTRIBUTING CO. N.W. ATLANTA,GEORGIA,U.S.A. via the port of VANCOUVER,B.C.

Whiskey,marked:

HARWOODS BLENDED CANADIAN WHISKEY 26.2/3 ozs.

1943 6/44 1600 Cases ea.2.00 --- 3200.00 Glns. 70.5 2534.40 Proof Glns.
Ex 87

said whiskey being the product of the distillery of the United Distillers Limited, situated at the said City of Vancouver, and was bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:-

(1) That the particular distilled spirits are Canadian whiskey

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whiskey for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

Consular Invoice No. 5170

Car No.

CPR to Emerson Soo to Chicago Wabash to St. Louis L&N to destination.

Shipping Marks: IMPORTED BY: R.C. Williams & Company Incorporated
265 10th Avenue
New York City,N.Y.
Sole Agents for U.S.A.

CERTIFICATE OF ORIGIN.

I, THOMAS H. STEELE of the City of Vancouver, in the Province of British Columbia, Chief Excise Officer, do hereby certify:-

(a) That I am the officer in charge of the Excise Branch, Department of National Revenue, in connection with the business of United Distillers Limited, Distillers, in the Province of British Columbia.

(b) That on TWENTY FOURTH day of JUNE 1944, the said United Distillers Limited, despatched to R.C. WILLIAMS & CO.INC. A/C NATIONAL DISTRIBUTING CO. N.W. ATLANTA,GEORGIA,U.S.A. via the port of VANCOUVER,B.C.

Whiskey,marked:

HARWOODS BLENDED CANADIAN WHISKEY 26.2/3 OZ.

1943 6/44 1600 Cases ea.2.00 --- 3200.00 Glns. 70.8 2534.40 Proof Glns.
Ex 87

said whiskey being the product of the distillery of the United Distillers Limited, situated at the said City of Vancouver, and was bottled by them thereat under Excise supervision.

(c) That I have referred to the books in the Excise Office for the particulars of the above shipment, and have carefully compared with my books the Excise marks upon the said cases as herein described, and I find the same to be true and correct.

I further certify:-

(1) That the particular distilled spirits are Canadian whiskey

(2) That the distilled spirits have been manufactured in compliance with the laws of the Canadian Government regulating the manufacture of whiskey for home consumption.

(3) That the product conforms to the requirements of the Immature Spirits Act of the Canadian Government for spirits intended for exportation.

Consular Invoice No. CPR to Emerson Soo to Chicago Wabash to St. Louis
5170 L&N to destination.
Car No.

Shipping Marks: IMPORTED BY: R.C. Williams & Company Incorporated
265 10th Avenue
New York City,N.Y.
Sole Agents for U.S.A.

Defendant Klein Exhibit B6

MEMORANDUM OF AGREEMENT made this 1st day of February, 1941, by and between DISTILLERS HARWOOD & CO. LTD. of Vancouver, British Columbia, Canada (hereinafter called "SHIPPER") and AGENCIAS DESTILADORAS, S. A. (DISTILLERS AGENCIES, INC.) of Havana, Cuba (hereinafter called "AGENT"). Parties

WITNESSETH:

WHEREAS, the SHIPPER is the owner, producer and blender of Canadian Whiskey under the brand name of "HARWOOD'S", a blended Canadian Whiskey of 90.4 proof; and

WHEREAS, it is the intention of the parties hereto that the SHIPPER appoint the AGENT as its exclusive distributing agent for the sale of the said HARWOOD'S whiskey for the entire world, subject to the terms and conditions of this agreement;

NOW, THEREFORE, in consideration of these presents, and for other good and valuable considerations, the parties hereto mutually covenant and agree as follows:

FIRST: The SHIPPER appoints the AGENT as its exclusive agent to distribute the brand of blended Canadian Whiskey under the label of "HARWOOD'S". Agenc

SECOND: The territory covered by this exclusive agency for the sale of "HARWOOD'S" Canadian Whiskey shall be the entire world. Terri

THIRD: The price to be paid by the AGENT to the SHIPPER for the said "HARWOOD'S" Canadian Whiskey

ice

shall be $8.05 per case of 12 bottles of fifths (four-fifths American quarts) at 90.4 proof, f.o.b. Vancouver, British Columbia, Canada, in funds of the United States of America, net, no discount for quantity or payment.

yment

FOURTH: Payment shall be made by the AGENT to the SHIPPER by letter of credit established by the AGENT, or any of its customers, in favor of the SHIPPER or its designee, or upon any other terms set forth by the SHIPPER on five (5) days notice to the AGENT. In the event that the SHIPPER waives the requirement of a letter of credit for any shipment or shipments, such waiver shall not be construed to constitute a waiver of the terms of this paragraph for any future shipments.

lding items agency

FIFTH: The SHIPPER may increase the scope of this agency to the AGENT by adding other items of merchandise produced or bottled by the SHIPPER at prices to be mutually agreed upon between the parties hereto in writing, agency for which items shall be upon the terms and conditions of this agreement.

SIXTH: The term of this agreement shall be for ten (10) years from the date hereof.

bject lause

SEVENTH: This agreement is subject to the ability of the SHIPPER to perform and should it be unable to perform the same by the act of God, or the elements, public authority public enemy, embargoes, obstruction to navigation, strikes insurrection, fire, floods, unusual delay of common carriers unavoidable casualties, inability to procure material or supplies, order of requisition, request or regulation of any governmental authority or other causes beyond their control, whether or not the cause be of the same class or kind

Defendant Klein Exhibit BG

as those enumerated herein which may directly or indirectly cause the SHIPPER to be unable to deliver or ship, or prevent it from manufacturing, bottling or bottling the merchandise covered by this agency, then and in such event any order or any part thereof remaining undelivered shall be cancelled without penalties or damage, and the AGENT or its customers shall be entitled to the return of any deposits or the release of any letters of credit, if such have been established, and all or such undelivered portions of such orders shall be null and void as though never having existed.

EIGHTH: This agreement constitutes the entire understanding between the parties hereto, and no amendments or changes thereof shall be valid and binding unless the same is in writing, signed by both of the parties hereto.

Agreement is entire understanding

NINTH: IT IS UNDERSTOOD AND AGREED that the AGENT shall have the right to assign and transfer this Agreement to any other person, firm or corporation, conditioned however, upon the approval of the shipper, which approval should be in writing.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

DUNCAN HARWOOD & CO. LTD.

By A. L. MCLENNAN (L. S.)

AGENCIAS DESTILADORAS, S. A.
(DISTILLERS AGENCIES, INC.)

By F. GURRI (L. S.)

[COPY]

Defendant Klein Exhibit BH

AGENCIAS DESTILADORES, S. A.
AGUIAR 411, 5o. PISO
TELEFONO M-5687
LA HABANA

May 8th, 1944.

Duncan Harwood & Co., Ltd.,
8900 Shaughnessy Street,
Vancouver, B.C., Canada.

Dear Sirs:

We have this day informed R.C. Williams & Co., Inc. of 265 Tenth Avenue, New York, N. Y., that they may communicate directly with you in all matters relating to shipments, etc, of Harwood's Blended Canadian Whiskey.

We feel that this arrangement will save considerable time and delay and will do away with the necessity of R. C. Williams & Co., Inc. writing to us about any matter regarding which they could very well communicate with you direct.

Yours very truly,

AGENCIAS DESTILADORES, S. A.

By: (Illegible)
Secretary

EC/hg

Defendant Klein Exhibit BJ

Carbon copy of letter dated May 10, 1944 from Agencias to J. N. Goddard & Sons, Ltd., Barbados, B. W. I., referring to the fact that H. H. Klein had assigned to Agencias his contract with Goddard covering 100,000 gallons of alcohol; and advising Goddard that funds made available to it under a $15,000 letter of credit to its order through National City Bank of New York in Havana had been released by the Havana authorities; also advising that future letters of credit in connection with shipments of the alcohol from Goddard to United Distillers, Ltd. in Canada would reach Goddard more promptly.

Defendant Klein Exhibit BK

Carbon copy of cable dated June 30, 1944 from Agencias Destiladoras to J. N. Goddard & Sons, Ltd., Barbados, B. W. I. requesting Goddard to cable United Distillers, Ltd. at Vancouver, B. C., Canada, when a shipment of alcohol consigned to United Distillers leaves so that United Distillers might cover same with insurance.

Defendant Klein Exhibit BM

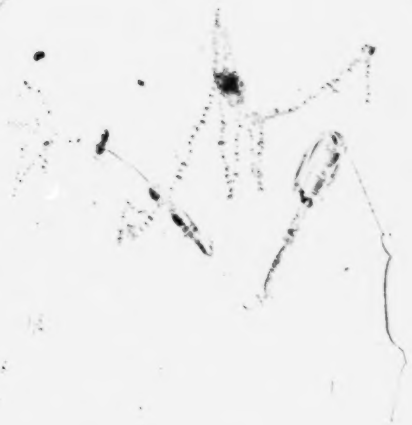
Photostatic copy of resolution passed by board of directors of Agencias at a meeting held September 6, 1944 authorizing the opening of a bank account at the Chase National Bank at any of its branches in New York City and authorizing H. H. Klein as president and treasurer of the Corporation to sign documents with respect to any funds in said account and to transact business with the bank on behalf of the Corporation.

Defendant Klein Exhibit BQ

Original certificate of incorporation in English of Compania Ramsey Scott Exportadora, S.A., showing the incorporation of that Company at Havana, Cuba on October 12, 1945.

Defendant Klein Exhibit BR

Original certificate dated December 29, 1945 of resolution adopted at a general meeting of stockholders of Ramsey Scott held December 27, 1945 authorizing H. H. Klein as president and treasurer to open a bank account in the Chase National Bank with power to sign all necessary documents on behalf of the Corporation.



Defendant Klein Exhibit BR

Duplicate original of certificate dated December 29, 1945 of a resolution adopted at a general meeting of stockholders of Ramsey Scott held December 27, 1945 authorizing H. H. Klein as president and treasurer to open a bank account in the Royal Bank of Canada at its head office in Montreal and to sign all necessary documents in connection therewith.

Defendant Klein Exhibit BR

Original certificate dated February 4, 1946 of a resolution adopted at a general meeting of stockholders of Ramsey Scott held February 2, 1946 authorizing H. H. Klein as president and treasurer to open bank accounts on behalf of Ramsey Scott in Havana, Cuba or elsewhere and designating the Canadian Bank of Commerce, head office Montreal, Canada or its agencies throughout the world as depositories of the funds of Ramsey Scott and authorizing H. H. Klein as president and treasurer to sign all necessary documents in connection therewith.

Defendant Klein Exhibit BR

Duplicate original of certificate dated January 28, 1947 of a resolution adopted at a meeting of the board of directors of Ramsey Scott held December 31, 1946 authorizing H. H. Klein to be the authorized signature of the Corporation and to open and maintain bank accounts in its behalf anywhere throughout the world; also designating the Bank of Nova Scotia, head office Montreal, Canada, or any of its agencies throughout the world as depositories of the funds of Ramsey Scott and authorizing H. H. Klein as authorized signature to sign any and all documents in connection therewith.

Defendant Klein Exhibit BY

Certificate of incorporation of John Dunbar & Co. Inc. showing its incorporation at Havana, Cuba on March 13, 1944.

Defendant Klein Exhibit CE

Certificate dated December 29, 1945 of a resolution adopted at a general meeting of stockholders of Exportadora de la Costa, S.A., held December 27, 1945 authorizing the opening of an account at the Chase National Bank at any of its branches in the City of New York and authorizing H. H. Klein as president and treasurer to sign any documents and transact any business on behalf of the corporation in connection therewith.

Defendant Klein Exhibit CF

Duplicate original certificate dated December 29, 1945 of a resolution adopted at a general meeting of stockholders of Exportadora de la Costa, S.A., held December 27, 1945 authorizing the opening of a bank account at the Royal Bank of Canada at its head office in Montreal or in any of its agencies throughout the world and authorizing H. H. Klein as president and treasurer to sign any documents or transact any business on behalf of the corporation in connection therewith.

Defendant Klein Exhibit CL

Certified copy of certificate of incorporation of Exportadora Kent, S.A., showing the incorporation of that Company at Havana, Cuba on July 3, 1945.

Defendant Klein Exhibit CD

Certificate of incorporation of Exportadora de la Costa, S.A., showing incorporation of that Company at Havana, Cuba on October 11, 1945.

Defendant Klein Exhibit CQ

Duplicate original certificate dated October 11, 1945 of a resolution adopted at a meeting of the board of directors of Exportadora Kent, S.A., held October 11, 1945 authorizing the opening of a bank account at the Royal Bank of Canada at its head office in Montreal or at any of its agencies throughout the world and authorizing H. H. Klein as president and treasurer to sign any documents and transact any business on behalf of the Company in connection therewith.

Defendant Klein Exhibit CR

Duplicate original of certificate dated December 28, 1945 of a resolution adopted at a meeting of the board of directors of Exportadora Kent, S.A., held December 28, 1945 designating the Chase National Bank of New York, the depositary of the funds of Exportadora Kent, S.A., and authorizing Ellis Rosenberg as treasurer to sign any documents and transact any business on behalf of the Company in connection therewith.

Defendant Klein Exhibit CS

Duplicate original letter dated October 12, 1945 from Exportadora Kent, S.A., to H. Harvey Co. Ltd., Baltimore, Maryland, permitting the latter to communicate directly with John Dunbar & Co. Ltd. in Vancouver, B. C., in connection with Dunbar's Blended Canadian Whiskey.

Defendant Klein Exhibit CT

Duplicate original letter dated October 12, 1945 from Exportadora Kent, S.A., to John Dunbar & Co. Ltd., Vancouver, B. C., advising that Exportadora Kent had informed H. Harvey Co. Ltd. that the latter might communicate directly with John Dunbar as to all matters relating to shipments of Dunbar's Blended Canadian Whiskey in order to save time and avoid delay.

Defendant Klein Exhibit CU

Original letter dated October 19, 1945 from John Dunbar & Co. Ltd. to Exportadora Kent, S.A., acknowledging receipt of Exportadora Kent's letter which has just been described.

Defendant Klein Exhibit CX

Certified copy of resolution adopted at a meeting of the board of directors of Financiera Lloyds, S.A., held April 16, 1945 authorizing the opening of a bank account at the Chase National Bank, New York.

Defendant Klein Exhibit CY

Certificate dated February 2, 1946 of a resolution adopted by the board of directors of Financiera Lloyds, S.A., at a meeting held December 27, 1945 authorizing H. H. Klein as president and treasurer to sell, pledge, hypothecate, endorse, sign, transfer or otherwise dispose of any and all real estate, stocks, bonds, securities and choses in action and assets of the Company.

Defendant Klein Exhibit DF2

Certificate of incorporation of Angus Kirby & Co. Ex porters Inc. showing the incorporation of that Company on June 30, 1944.

DEFENDANT'S EXHIBIT DFxd
U.S. Dist. Court
S.D. of N.Y.
MAY 3 1950

MINUTES OF MEETING OF DIRECTORS

OF

THE SEABOARD SYNDICATE, S. A.

The Meeting of the Directors of The Seaboard Syndicate, S. A., a Panamá Corporation, organized under the laws of the Republic of Panamá, was held at 411 Aguiar Street, Havana, Cuba, on the twenty first day of January, one thousand nine hundred and forty seven, at ten thirty o'clock, a.m.----------

There were present, in person or by proxy, the following directors:----------

Hyman Harvey Klein (represented by proxy to Mr. Ellis Rosenberg, dated January 17th., 1947)
Ellis Rosenberg
Francisco Gurri

On motion duly made and seconded, Mr. Ellis Rosenberg was appointed Chairman of the Meeting and Dr. Francisco Gurri was appointed Secretary of the Meeting.----------

The Chairman presented to the Meeting the resignation of Mr. Hyman Harvey Klein as President, Treasurer and Director of the Company, effective January twenty first, one thousand nine hundred and forty seven.----------

Upon motion duly made and seconded the Meeting unanimously voted to accept the resignation tendered by Mr. Hyman Harvey Klein to the offices of Director, President and Treasurer of the Company, effective as of January twenty first, one thousand nine hundred and forty seven.----------

The Chairman then stated that it would be advisable for this corporation to appoint a Special Representative for the purpose of operating the corporation's banking accounts. Upon due deliberation, the following resolution was duly moved, seconded and unanimously passed:-----

> RESOLVED: That Mr. Hyman Harvey Klein be and he is hereby appointed as Authorized Signature of this - Corporation with sufficient authority for and on - behalf of this Corporation to open and maintain -- bank accounts in any bank or branch or agency of - any bank throughout the world and to sign in said bank accounts any and all checks,drafts and any -- other orders with respect to any funds of the corporation at any time, inclusive of any such checks, drafts or other orders in favor of said Hyman Harvey Klein or any other person.----------

The Chairman further stated that it will be advisable for this Corporation to open Bank accounts with -- The Royal Bank of Canada, Head Office, Montreal,Canada, or any of its branches and/or Agencies throughout the world - and/or The Bank of Nova Scotia,Head Office, Montreal, Canada or any of its Branches and/or Agencies throughout the - world and/or The Bank of Montreal, Head Office, Montreal,- Canada, or any of its Branches and/or Agencies throughout the world and/or The Canadian Bank of Commerce,Head Office Montreal, Canada, or any of its branches and/or Agencies - throughout the world. After due deliberation, the following resolutions were duly moved,seconded and unanimosuly - adopted:----------

> RESOLVED: That Mr. Hyman Harvey Klein, in his capacity as the AUTHORIZED SIGNATURE, be and he is hereby - authorized for and on behalf of this Corporation to - open and maintain Bank accounts in any bank or branch or Agency of any bank throughout the world and to -- sign in said bank accounts any and all checks, drafts and any other orders with respect to any funds at -- any time, inclusive of any such checks, ----------

drafts or other orders in favor of said HYMAN HARVEY KLEIN or any other person.----------

FURTHER RESOLVED: that the Royal Bank of Canada,- Head Office, Montreal, Canada or any of its branches and/or Agencies throughout the world (herein after called the Bank),be and hereby are designated depositories of the funds of THE SEABOARD SYNDICATE, S. A., and that the said Hyman Harvey -- Klein be and hereby is authorized to sign for and on behalf of this Corporation as AUTHORIZED SIG-- NATURE any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corporation with the Bank and/or -- against any account of this Corporation maintained at any time with the Bank, inclusive of any -- such checks, drafts or other orders in favor of - the above designated person or other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and that the Bank - is hereby further authorized to receive for deposit to the credit of this Corporation and/or for - collection for the account of this Corporation -- any and all checks, drafts, notes or other instruments for the payment of money, whether or not -- endorsed by this Corporation shall have the unqualified approval of this Corporation if signed by the said Hyman Harvey Klein and also to receive - as the act of this Corporation, reconcilements of accounts when signed by the above designated person or his appointee; and be it,----------

FURTHER RESOLVED: that the Bank of Montreal, Head Office, Montreal, Canada or any of its branches - and/or Agencies throughout the world (hereinafter called the Bank) be and hereby are designated depositories of the funds of THE SEABOARD SYNDICATE S.A. and that the said Hyman Harvey Klein as --- AUTHORIZED SIGNATURE of said Corporation be and - hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts or -- other orders with respect to any funds at any -- time to the credit of this Corporation with the - Bank and/or against any account of this Corporation maintained at any time with the Bank, inclusive of any such checks, drafts or other orders - in favor of the above designated Hyman Harvey -- Klein or other person, and that the Bank be and - hereby is authorized to pay and debit the same to any account of this Corporation then maintained - with it; and that the Bank is hereby authorized - to receive for deposit to the credit of this Corporation and/or for collection for the account of this Corporation any and all checks, drafts,notes

or other instruments for the payment of money, whe ther or not endorsed by this Corporation, shall - have the unqualified approval of this Corporation if signed by the said Hyman Harvey Klein.---------

FURTHER RESOLVED: that the Canadian Bank of Com -- merce, Head Office, Montreal, Canada, or any of - its branches and/or Agencies throughout the world (hereinafter called the Bank), be and hereby are - designated depositories of the funds of THE SEA -- BOARD SINDICATE, S. A., and that Hyman Harvey Klein as AUTHORIZED SIGNATURE of said Corporation be and hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts or -- other orders with respect to any funds at any time to the credit of this Corporation with the Bank -- and/or against any account of this Corporation main tained at any time with the Bank, inclusive of any such checks, drafts, or other orders in favor of - the above designated Hyman Harvey Klein or other - person, and that the Bank be and hereby is autho-- rized to take and debit the same to any account of this Corporation then maintained with it; and that the Bank is hereby further authorized to receive - for deposit to the credit of this Corporation and/ or for collection for the account of this Corpora- tion any and all checks, drafts, notes or other -- other instruments for the payment of money, whether or not endorsed by this Corporation shall have the unqualified approval of this Corporation if signed by the said Hyman Jarvey Klein, and also to receive as the act of this Corporation, reconcilements of accounts when signed by the above designated person or his appointee; and be it;----------

FURTHER RESOLVED: that the Bank of Nova Scotia,Head Office, Montreal, Canada, or any of its branches -- and/or Agencies throughout the world (hereinafter - called the Bank), be and hereby are designated depo sitories of the funds of THE SEABOARD SYNDICATE,S.A. and that Hyman Harvey Klein as AUTHORIZED SIGNATURE of said Corporation be and hereby is authorized to sign for and on behalf of this Corporation any and all checks, drafts or other orders with respect to any funds at any time to the credit of this Corpora tion with the Bank and/or against any account of -- this Corporation maintained at any time with the - Bank, inclusive of any such checks, drafts, or --- other orders in favor of the above designated Hyman Harvey Klein or other person, and that the Bank be and hereby is authorized to pay and debit the same to any account of this Corporation then maintained with it; and the Bank is hereby furhher authorized to receive for deposit to the credit of this Corpo ration and/or for collection for the account of -

this Corporation any and all checks, drafts, notes or other instruments for the payment of money whether or not endorsed by this Corporation, and that shall have the unqualified approval of this Corporation if signed by the said Hyman Harvey Klein - and also to receive as the act of this corporation, reconcilements of accounts when signed by the above designated person or his appointee; and be it,-----

FURTHER RESOLVED: that the said Hyman Harvey Klein, as AUTHORIZED SIGNATURE of this Corporation be and he is hereby authorized for and on behalf of this - Corporation to transact any and all such business - with or through the Bank at any time as may be --- deemed by said person and in reference to any of -- the businesses hereinbefore referred to, to make, - enter into, execute and deliver to the Bank such documents as to such person may seem to be necessary or desirable; any and all the withdrawals of moeny and/or transactions heretofore had in behalf of -- this Corporation with the Bank being hereby ratified, conferred and approved.----------

FURTHER RESOLVED: that the said Hyman Harvey Klein - may in writing appoint from time to time any person as he may deem advisable for the purpose of receiving all paid checks and vouchers and/or signing or delivering to the Bank the Bank's form of settlement of balances and releases.----------

FURTHER RESOLVED: that Mr. Hyman Harvey Klein, in - his capacity as AUTHORIZED SIGNATURE of the Corporation be and he hereby is authorized, for and on behalf of this Corporation, to open and maintain Bank accounts in any Bank or branch or agency of any -- Bank whether in Panamá or in any other place in the world and to sign in said ban accounts any and all checks, drafts, and any other orders with respect - to any funds at any time, inclusive of any such --- checks, drafts or other orders in favor of said Hyman Harvey Klein.----------

Upon motion duly made and seconded, the remaining - Directors, Messrs. Rosenberg and Gurri, voted to fill the vacancy of Director occasioned by the resignation of Mr. Hyman Harvey Klein and in accordance with the By-Laws of the Company to elect Mr. Jaime Cabarrocas as Director for a period of one year or until his successor is elected. Mr. Jaime Cabarrocas, who was invited to attend this Meeting, was present

and accepted his election as Director.----------

Mr. Cabarrocas then informed the Meeting of the advisability of offering to sell to Mr. Hyman Harvey - Klein 78,555 shares of the Common Stock of the United Distillers of Canada Limited at eight dollars ($8.00) per -- share and it was thereupon moved and seconded and unanimously approved that a cable be sent to Mr. Hyman Harvey Klein containing this offer. The cable was thereupon read to -- the Meeting and was ordered spread upon the Minutes of the Board of Directors as follows:----------

"NLT
"HYMAN HARVEY KLEIN
"1225 O'SULLIVAN BLDG
"10 LIGHT STREET
"BALTIMORE, MARYLAND

"WE HEREBY OFFER TO SELL TO YOU SEVENTY-EIGHT THOU-
"SAND FIVE HUNDRED FIFTY SHARES COMMON STOCK OF --
"UNITED DISTILLERS OF CANADA LIMITED AT EIGHT DOL-
"LARS PER SHARE STOP PLEASE WIRE ACCEPTANCE OR RE-
"JECTION

"THE SEABOARD SYNDICATE S A".-

It was thereupon further moved and seconded and unanimously approved that in the event of Mr. Hyman -- Harvey Klein's acceptance of the foregoing offer the fol-- lowing resolution be and the same is hereby unanimously authorized and approved:----------

RESOLVED: That the President of this Corporation, The Seaboard Syndicate, S. A. be -- and hereby is authorized to execute, sign - and deliver the following assignment to Hyman Harvey Klein the more fully to transfer to him title to the said 78,555 (seventy -- eight thousand five hundred and fifty five) shares of the Common Capital Stock of the - United Distillers of Canada, Limited, which is at the present time owned by this Corporation:----------

"STOCK"

"FOR VALUE RECEIVED THE UNDERSIGNED hereby sells, - assigns and transfers

unto HYMAN HARVEY KLEIN

Seventy eight thousand, five hundred fifty five -- (78,555) shares of the Common Capital Stock of -- UNITED DISTILLERS (OF CANADA) LTD. standing in the name of the undersigned on the books of the said - Corporation, represented by Certificates Nos.

VA 1263 - for 25,000 shares,
VA 1264 - for 25,000 shares,
VA 1265 - for 25,000 shares,
VA 1297 - for 1,625 shares,
VA 1311 - for 505 shares,
VA 1334 - for 400 shares,
VA 1338 - for 1,025 shares,

and hereby irrevocable constitutes and appoints - THE ROYAL BANK OF CANADA, HEAD OFFICE, MONTREAL, - QUEBEC, CANADA, and/or The Royal Bank of Canada, - East End Branch Vancouver, B. C., Canada, the at-- torney of the undersigned, to enter the transfer - of the said shares in a Register of Transfers of - the said Corporation, with full power of substitution in the premises."----------

Thereupon the Secretary called the attention - of the Meeting and informed that Mr. Ellis Rosenberg tendered his resignation as Director and Assistant-Secretary of the Company and upon due deliberation the Meeting --- resolved to accept the resignation tendered by Mr. Ellis - Rosenberg as Director and Assistant Secretary of the Company, effective as of this date upon the adjournment of this Director's Meeting.----------

The Chairman then called the attention of this Meeting to the resignation of Mr. Francisco Gurri as Director of the Company effective this date upon the adjourn -- ment of this Director's Meeting, and upon due deliberation the Meeting resolved to accept this resignation of Francis

co Gurri as Director as tendered.----------

The Meeting was thereupon duly informed that the Board of Directors of The Seaboard Syndicate, S. A.,- as now constituted and after the adjournment of this Meeting consists of Messrs:----------

Alistair McLennan
Jaime Cabarrocas

and upon motion duly made and seconded and unanimously approved the Board of Directors ratified the election of -- Messrs. Alistair McLennan and Jaime Cabarrocas to serve - for one year from this date or until their successors are elected.----------

The Secretary further informed the Meeting - that since the death of Mr. Enrique de Cubas the office - of Secretary of the Company is vacant. Also, with the -- resignation of Mr. Ellis Rosenberg as Assistant-Secretary this office, too, is vacant. Also with the resignation - of Mr. Hyman Harvey Klein as President and Treasurer, the said offices are vacant too.----------

Thereupon, on motion duly made and seconded - with Messrs. Cabarrocas, Rosenberg and Gurri voting it -- was unanimously resolved to elect and to ratify the following officers of this Company to serve for one year or until their successors are elected:----------

President..... Raúl Pérez Vitier
Vice-President..... Ricardo Morán
Treasurer..... Delfín Gurri
Secretary..... Jaime Cabarrocas
Assistant-Secretary..... Raúl Pérez Vitier

There being no further business to come be

KNOW ALL MEN BY THESE PRESENTS

That, the undersigned, Hyman Harvey Klein
Director of The Seaboard Syndicate S.A.
in English
does hereby nominate, appoint and constitute Mr. Ellis
Rosenberg as his proxy for him and in his name to represent him and vote at the Special Meeting of the Board of Directors of said Company to be held on January 21st.
, one thousand nine hundred and forty seven, or at any other such meeting held before the date hereinafter indicated, and to act for him and in his name and stead with respect to the meeting of Directors, with the same force and effect as if the undersigned were personally present, giving to said Mr. Ellis Rosenberg full power of substitution and revocation.

This proxy is to continue in force until the 22nd day, of January one thousand nine hundred and forty seven, unless sooner revoked.

In Witness Whereof, the undersigned has hereunto set his hand this seventeenth day of January, one thousand nine hundred and forty seven.-

fore the Meeting it was adjourned.

Ellis Rosenberg
Chairman.-

Secretary.-

January 21st., 1947

The Seaboard Syndicate, S. A.,
Panama, R.P.

Gentlemen:

ER

At your Board of Directors Meeting to be held at 411 Aguiar Street, Havana, Cuba on this 21st. day of January 1947, kindly accept my resignation as Director of your Company to take effect immediately upon the adjournment of this Meeting.

Very truly yours,

E. Gmi

January 21st., 1947.

The Seaboard Syndicate, S. A.,

Panamá, R.P.

Gentlemen:

At your Board of Directors Meeting to be held at 411 Aguiar Street, Havana, Cuba on this 21st. day of January, 1947, kindly accept my resignation as Director and Assistant-Secretary of your Company, to be effect immediately upon the adjournment of this Meeting.

Very truly yours,

Ellis Rosenberg

January 17, 1947

The Seaboard Syndicate, S. A.
Calle Segunda, No. 8,
Panama, R. P.

Dear Sirs:

Kindly accept my resignation as President, Treasurer, and Director of your Company, effective January 21st, 1947.

Yours very truly,

Duncan Harvey Kellum

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
Internal Revenue Service

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
	EP Del Pen Int	229,052.57 57,263.14 26,943.48		313,259.19	March 2, 1948 SPL No. 3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

H. Harvey Company, LTD
1225 O'Sullivan Building
Baltimore, Maryland
Year 1945

Date March 3, 1948
To avoid further interest, the amount stated above must be paid to the
Collector of Internal Revenue
at Baltimore, Md.
within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—84272-6 GPO

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
Internal Revenue Service

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
	 Int DEEP Int.	1,322.38 155.55 41,292.66 4,857.26		47,627.85	March 2, 1948 SPL No. 3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

H. Harvey Company, LTD
1225 O'Sullivan Bldg.
Baltimore, Maryland
year 1945

Date March 3, 1948
To avoid further interest, the amount stated above must be paid to the
Collector of Internal Revenue
Baltimore, Md.
at
within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—84272-6 GPO

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
Internal Revenue Service

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
	Int	642,396.16 37,021.37		679,417.53	March 2, 1948 SPL No. 3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

H. Harvey Company, LTD
1225 O'Sullivan Building
Baltimore, Maryland
year 1946

Date March 3, 1948
To avoid further interest, the amount stated above must be paid to the
Collector of Internal Revenue
at Baltimore, Md.
within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—84272-6 GPO

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
		322,358.45			
	FRAUD PENALTY	161,179.23			
	Interest	57,260.57		540,798.25	March Spl.#3 - March 2, 1948

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

Hyman H. Klein
1225 O'Sullivan Building
Baltimore 2, Maryland

Year 1944

Date March 3, 1948

To avoid further interest, the amount stated above must be paid to the

Collector of Internal Revenue
at Baltimore, Maryland
within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—84272-8 GPO

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
		1,562,981.29			
	FRAUD PENALTY	781,490.65			
	Int.	183,853.70		2,528,325.64	March 2, 1948 - Special #3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

Hyman H. Klein
1225 O'Sullivan Building
Baltimore 2, Maryland

Year 1945

Date March 3, 1948

To avoid further interest, the amount stated above must be paid to the

Collector of Internal Revenue
at Baltimore, Maryland
within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—84272-8 GPO

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
		1,599,916.25			
	FRAUD PENALTY	799,958.12			
	Interest	92,203.39		2,492,077.76	March 2, 1948 Spl. #3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

Hyman H. Klein
1225 O'Sullivan Bldg.
Baltimore, Maryland

Year 1946

Date March 3, 1948

To avoid further interest, the amount stated above must be paid to the

Collector of Internal Revenue
at Baltimore, Maryland
within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—84272-8 GPO

Defendant Klein Exhibit DR

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
		33,011.66 5,863.86		38,875.62	March 2-1948 Special #3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

Mrs. Gertrude Klein
3610 Clarinth Road
Baltimore 15, Maryland

Year 1944

Date March 3, 1948

To avoid further interest, the amount stated above must be paid to the

Collector of Internal Revenue

at Baltimore, Maryland

within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—24272-8 GPO

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
	Int.	205,855.47 24,214.81		230,070.28	March 2, 1948 Special #3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

Mrs. Gertrude Klein
3610 Clarinth Road
Baltimore 15, Maryland

Year 1945

Date March 3, 1948

To avoid further interest, the amount stated above must be paid to the

Collector of Internal Revenue

at Baltimore, Maryland

within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—24272-8 GPO

Form 17A—Rev. Feb. 1947
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF INCOME TAX DUE

BALANCE FORWARD	DATE	ASSESSMENT	AMOUNT PAID	BALANCE DUE	ACCOUNT NUMBER AND REMARKS
	Int.	211,345.45 12,179.87		223,525.32	March 2,1948 Special #3

Notice is hereby given that the amount of tax, penalty, and interest stated above has been assessed against you. Demand is hereby made for immediate payment thereof. The law provides that if payment is not made within 10 days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown to the right until paid.

Mrs. Gertrude Klein
3610 Clarinth Road
Baltimore 15, Maryland

Year 1946

Date March 3, 1948

To avoid further interest, the amount stated above must be paid to the

Collector of Internal Revenue

at Baltimore, Md.

within 10 days of the date of this notice.

COLLECTOR'S PAID STAMP

16—24272-8 GPO

Defendant Klein Exhibit DS

EXHIBIT A

TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

10 LIGHT STREET

BALTIMORE 2, MD.

OFFICE OF
INTERNAL REVENUE AGENT IN CHARGE
BALTIMORE DIVISION
835 O'Sullivan Building

March 10, 1948

DEFENDANT'S
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
JUN 14 1955

H. Harvey Company, Limited,
1225 O'Sullivan Building,
Baltimore 2, Maryland.

Gentlemen:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1945 and December 31, 1946 discloses a deficiency of $643,718.54, and that the determination of your declared value excess-profits tax liability for the taxable year ended December 31, 1945 discloses a deficiency of $41,292.66, and that the determination of your excess profits tax liability for the taxable year ended December 31, 1945 discloses a deficiency of $229,052.57 and $57,263.14 in penalty, as shown in the statement attached. Said deficiencies have been assessed under the provisions of the internal revenue laws applicable to jeopardy assessments.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within ninety days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States for a redetermination of the deficiencies.

Very truly yours,

Geo. J. Schoeneman,

Commissioner,

By J. E. Williams
Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver - 870

MRE/lml

STATEMENT

H. Harvey Company, Limited
1225 O'Sullivan Building
Baltimore 2, Maryland

Tax Liability for the Taxable Years Ended

December 31, 1945
December 31, 1946

Income Tax

	Liability	Assessed	Deficiency	25% Penalty
1945	$2,721.53	$1,399.15	$1,322.38	
1946	806,627.28	164,231.12	642,396.16	
Total	$809,348.81	$165,630.27	$643,718.54	

Declared Value Excess-Profits Tax

1945	$41,292.66	None	$41,292.66	

Excess Profits Tax

1945	$229,052.57	None	$229,052.57	$57,263.14

The determination of your income, declared value excess-profits, and excess profits tax and penalty liability has been made upon the basis of information on file with the Bureau of Internal Revenue.

Inasmuch as you failed to file an excess profits tax return for the taxable year ended December 31, 1945 within the time prescribed by law, 25 per centum of the tax has been added thereto in accordance with the provisions of Section 291 of the Internal Revenue Code.

Taxable Year Ended December 31, 1945

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$5,552.40
Unallowable deductions and additional income	
(a) Purchases	357,270.75
Net income adjusted	$362,823.15

Defendant Klein Exhibit DK

Certificate of incorporation of Financiera Lloyds, S.A., showing the incorporation of that Company at Havana, Cuba on April 13, 1945.

EXPLANATION OF ADJUSTMENTS

(a) Purchases

Allowable deduction for purchases was overstated.

COMPUTATION OF TAX

DECLARED VALUE EXCESS-PROFITS TAX COMPUTATION

Net income for declared value excess-profits tax computation		$362,823.15
Less: 10 percent of $400,000.00 value of capital stock as declared for the year ended June 30, 1945		40,000.00
Net income subject to declared value excess-profits tax		$322,823.15
$20,000.00 at 6.6%	$1,320.00	
$302,823.15 at 13.2%	39,972.66	
Total declared value excess-profits tax		$41,292.66
Declared value excess-profits tax assessed, Original return, Account No. 4200594		None
Deficiency of declared value excess-profits tax		$41,292.66

INCOME TAX COMPUTATION

Net income for declared value excess-profits tax computation		$362,823.15
Less: Declared value excess-profits tax		41,292.66
Adjusted net income		$321,530.49
Less: Adjusted excess profits net income		311,080.35
Normal and surtax net income		$10,450.14
Normal Tax:		
$5,000.00 at 15%	$750.00	
$5,450.14 at 17%	926.52	
Total normal tax		$1,676.52
Surtax:		
$10,450.14 at 10%		$1,045.01
Total normal tax and surtax		$2,721.53
Income tax assessed, Original return, Account No. 4200594		1,399.15

H. Harvey Company, Limited — Statement - 3

EXCESS PROFITS TAX

Excess Profits Credit Based on Invested Capital

Equity invested capital at beginning of taxable year			None
Capital paid in 9/13/45	$15,000.00		
Average		$4,479.45	
Capital paid in 12/28/45	$2,000.00		
Average		21.91	
Average capital addition			$4,501.36
25% of new capital			1,125.34
Invested capital			$5,626.70
Excess Profits Credit - 8% of $5,626.70			$450.14

Computation of Excess Profits Tax

Normal tax net income without credit under Section 26(e)			$321,530.49
Adjustments			None
Excess profits net income			$321,530.49
Less: Specific exemption		$10,000.00	
Excess profits credit		450.14	10,450.14
Adjusted excess profits net income			$311,080.35
95% of $311,080.35			$295,526.33
Surtax net income without credit under Section 26(e)		$321,530.49	
80% of $321,530.49		$257,224.39	
Less: Income tax		2,721.53	
Balance			$254,502.86
Excess profits tax, lesser of $295,526.33 or $254,502.86			$254,502.86
Less: Credit under Section 784			25,450.29
Excess profits tax liability			$229,052.57
Excess profits tax assessed on return (no return filed)			None
Deficiency of excess profits tax			$229,052.57
25% Penalty			$57,263.14

H. Harvey Company, Limited — Statement - 4

Taxable Year Ended December 31, 1946

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$432,187.16
Unallowable deductions and additional income	
(a) Purchases	1,690,516.20
Net income adjusted	$2,122,703.36

EXPLANATION OF ADJUSTMENTS

(a) Purchases

Allowable deduction for purchases was overstated.

COMPUTATION OF INCOME TAX

Net income adjusted	$2,122,703.36
Normal tax (24 percent of $2,122,703.36)	$509,448.81
Surtax (14 percent of $2,122,703.36)	297,178.47
Total normal tax and surtax	$806,627.28
Income tax liability	$806,627.28
Income tax assessed, Original return, Account No. 4100462	164,231.12
Deficiency of income tax	$642,396.16

Baltimore Division
90-D.

Form 870
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised June 1941)

H. Harvey Company, Limited
1225 O'Sullivan Building
Baltimore 2, Maryland

Maryland

(DATE RECEIVED)

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax: 25% Penalty

taxable year ended December 31, 1945 income tax in the sum of $ 1,322.38

taxable year ended December 31, 1946 income tax in the sum of $42,396.16

taxable year ended _____ income tax in the sum of $_____

taxable year ended December 31, 1945 (declared value) excess-profits tax in the sum of $ 41,292.66

taxable year ended December 31, 1945 excess profits tax in the sum of $29,052.57 $57,263.14

taxable year ended _____ in the sum of $_____

amounting to the total sum of _____ $114,063.77 $57,263.14

together with interest thereon as provided by law.

Defendant Klein Exhibit DT

Baltimore Division
CO-D.

Form 870
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised June 1941)

H. Harvey Company, Limited
1225 O'Sullivan Building
Baltimore 2, Maryland

Maryland

(DATE RECEIVED)

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax: 25% Penalty

taxable year ended December 31, 1945 income tax in the sum of $ 1,322.38

taxable year ended December 31, 1946 income tax in the sum of $42,396.16

taxable year ended _____ income tax in the sum of $_____

taxable year ended December 31, 1945 (declared value) excess-profits tax in the sum of $11,292.66

taxable year ended December 31, 1945 excess profits tax in the sum of $29,052.57 $57,263.14

taxable year ended _____ in the sum of $_____

amounting to the total sum of $14,063.77 $57,263.14

together with interest thereon as provided by law.

EXHIBIT A

TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

10 LIGHT STREET

BALTIMORE 2, MD.

OFFICE OF
INTERNAL REVENUE AGENT IN CHARGE
BALTIMORE DIVISION

835 O'Sullivan Building

March 10, 1948

Defendant Klein Exhibit DU

577

Mr. Hyman H. Klein,
3610 Clarinth Road,
Baltimore 15, Maryland.

Dear Mr. Klein:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944, December 31, 1945 and December 31, 1946 discloses a deficiency of $3,485,255.99 and $1,742,628.00 in penalty, as shown in the statement attached. Said deficiency has been assessed under the provisions of the internal revenue laws applicable to jeopardy assessments.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States for a redetermination of the deficiency.

Very truly yours,

Geo. J. Schoeneman,

Commissioner,

By

Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver - 870

MRE/lml

Form 1276

TREASURY DEPARTMENT
Internal Revenue Service
November 1942

NOTICE

APPEALS SHOULD BE ADDRESSED TO
THE TAX COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

IF YOU DECIDE TO INITIATE A PROCEEDING BEFORE THE TAX COURT OF THE UNITED STATES, your petition and proofs in the proceeding must be in accordance with the rules of practice of this court. Under the Revenue Acts of 1926, 1928 and 1932, the Revenue Acts of 1934, 1936, and 1938, the Internal Revenue Code, and the rule of the Tax Court, a petition (together with a filing fee of $10.00) must be mailed in sufficient time or filed so as to be RECEIVED BY THE TAX COURT, at its principal address Washington, D. C., within the number of days indicated in attached notice after the attached registered notice is mailed (not counting Sunday or Saturday, legal holiday in the District of Columbia as the last day of the time specified).

The Tax Court of The United States is in no way connected with the Bureau of Internal Revenue or the Treasury Department. Under no circumstances should a petition for redetermination be forwarded to the Commissioner of Internal Revenue or a collector of internal revenue.

STATEMENT

Mr. Hyman H. Klein
3610 Clarinth Road
Baltimore 15, Maryland

Tax Liability for the Taxable Years Ended

December 31, 1944
December 31, 1945
December 31, 1946

Income Tax

	Deficiency	50% Penalty
1944	$322,358.45	$161,179.23
1945	1,562,981.29	781,490.65
1946	1,599.916.25	799,958.12
Total	$3,485,255.99	$1,742,628.00

The determination of your income tax and penalty liability has been made upon the basis of information on file with the Bureau of Internal Revenue.

Your net income for the taxable years 1944, 1945 and 1946 has been determined in the respective amounts of $399,657.51, $1,752,747.19 and $1,922,398.70 in lieu of the amounts reported in your returns.

The fifty percent penalties shown herein for the taxable years 1944, 1945 and 1946 have been asserted in accordance with the provisions of Section 293(b) of the Internal Revenue Code.

Taxable Year Ended December 31, 1944

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$49,379.48
Unallowable deductions and additional income	
(a) Net income	350,278.03
Net income adjusted	$399,657.51

_____
(Taxpayer)

_____
(Taxpayer)

_____
(Address)

Date _____ By _____

NOTE.—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

U. S. GOVERNMENT PRINTING OFFICE 16—6669-1

Defendant Klein Exhibit DT

This copy to be retained by taxpayer.

_____
(Taxpayer)

_____
(Taxpayer)

_____
(Address)

Date _____ By _____

NOTE.—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

U. S. GOVERNMENT PRINTING OFFICE [illegible]

EXPLANATION OF ADJUSTMENT

(a) Net income

Corrected net income	$399,657.51
Net income reported on your return	49,379.48
Understatement	$350,278.03

COMPUTATION OF INCOME TAX

Net income adjusted	$399,657.51	
Less: Surtax exemption	1,500.00	
Balance (surtax net income)	$398,157.51	
Surtax on $398,157.51		$337,143.33
Net income adjusted	$399,657.51	
Less: Normal tax exemption	500.00	
Balance subject to normal tax	$399,157.51	
Normal tax on $399,157.51 at 3%		11,974.73
Income tax liability		$349,118.06
Income tax liability disclosed by return, Original Account No. 3D03324		26,759.61
Deficiency of income tax		$322,358.45
50% Penalty		$161,179.23

Taxable Year Ended December 31, 1945

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$31,698.75
Unallowable deductions and additional income	
(a) Net income	1,721,048.44
Net income adjusted	$1,752,747.19

Defendant Klein Exhibit DU

EXPLANATION OF ADJUSTMENT

(a) Net income

Corrected net income	$1,752,747.19
Net income reported on your return	31,698.75
Understatement	$1,721,048.44

COMPUTATION OF INCOME TAX - ALTERNATIVE METHOD

Net income adjusted	$1,752,747.19	
Less: Excess of net long-term capital gain over net short-term capital loss	653.41	
Ordinary net income	$1,752,093.78	
Less: Surtax exemptions	1,000.00	
Balance (surtax net income)	$1,751,093.78	
Surtax on $1,751,093.78		$1,568,315.34
Ordinary net income	$1,752,093.78	
Less: Normal tax exemption	500.00	
Balance subject to normal tax	$1,751,593.78	
Normal tax on $1,751,593.78 at 3%		52,547.81
Partial tax		$1,620,863.15
50% of excess of net long-term capital gain over net short-term capital loss		326.70
Alternative tax		$1,621,189.85
Income tax liability		$1,621,189.85
Income tax liability as limited by Section 12(g) of the Internal Revenue Code - 90% of $1,752,747.19		$1,577,472.47
Income tax liability disclosed by return, Original Account No. 3012136		14,491.18
Deficiency of income tax		$1,562,981.29
50% Penalty		$781,490.65

Mr. Hyman H. Klein — Statement - 4

Taxable Year Ended December 31, 1946

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$65,944.89
Unallowable deductions and additional income	
(a) Net income	1,856,453.81
Net income adjusted	$1,922,398.70

EXPLANATION OF ADJUSTMENT

(a) Net income

Corrected net income	$1,922,398.70
Net income reported on your return	65,944.89
Understatement	$1,856,453.81

COMPUTATION OF INCOME TAX - ALTERNATIVE METHOD

Net income adjusted	$1,922,398.70
Less: Excess of net long-term capital gain over net short-term capital loss	7,136.08
Ordinary net income	$1,915,262.62
Less: Exemptions (2)	1,000.00
Balance	$1,914,262.62
Combined tentative normal tax and surtax	$1,716,798.98
Less: 5% of combined tentative normal tax and surtax	85,839.95
Partial tax	$1,630,959.03
50% of excess of net long-term capital gain over net short-term capital loss	3,568.04
Alternative tax	$1,634,527.07
Income tax liability	$1,634,527.07
Income tax liability disclosed by return, Original Account No. 3017788	34,610.82
Deficiency of income tax	$1,599,916.25
50% Penalty	$799,958.12

Defendant Klein Exhibit DU

582

e Division — Mr. Hyman H. Klein — Maryland

Defendant Klein Exhibit DU

Baltimore Division
90-D.

Form 870
TREASURY DEPARTMENT
Internal Revenue Service
(Revised June 1941)

Mr. Hyman H. Klein
3610 Clarinth Road
Baltimore 15, Maryland

Maryland

(DATE RECEIVED)

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax: 50% Penalty

taxable year ended December 31, 1944 income tax in the sum of $ 322,358.45 $161,179.23

taxable year ended December 31, 1945 income tax in the sum of $1,562,981.29 781,490.65

taxable year ended December 31, 1946 income tax in the sum of $1,599,916.25 799,958.12

taxable year ended _____ (declared value) excess-profits tax in the sum of $_____

taxable year ended _____ excess profits tax in the sum of $_____

taxable year ended _____ in the sum of $_____

amounting to the total sum of _____ $3,485,255.99 $1,742,628.00

together with interest thereon as provided by law.

_____
(Taxpayer)

_____
(Taxpayer)

_____
(Address)

Date _____ By _____

NOTE.—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

U. S. GOVERNMENT PRINTING OFFICE 16—[illegible]-1

Baltimore Division
U. S. INTERNAL REVENUE
TREASURY DEPARTMENT
Internal Revenue Service
(Revised June 1947)

Mr. Myron B. Klein
3060 Glenvalley Road
Baltimore 15, Maryland

Maryland
DATE RECEIVED

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax: 50% Penalty

taxable year ended December 31, 1944	income tax in the sum of $	322,358.45	$161,179.23
taxable year ended December 31, 1945	income tax in the sum of $	1,562,381.29	781,190.65
taxable year ended December 31, 1946	income tax in the sum of $	1,599,916.25	799,958.12
taxable year ended ____	(declared value) excess-profits tax in the sum of $		
taxable year ended ____	excess profits tax in the sum of $		
taxable year ended ____	in the sum of $		
amounting to the total sum of		$3,484,656.97	$1,742,628.01

together with interest thereon as provided by law. $ 5,227,883.99

This copy to be retained by taxpayer.

_____
(Taxpayer)

_____
(Taxpayer)

_____
(Address)

Date _____ By _____

NOTE.—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

U. S. GOVERNMENT PRINTING OFFICE 16—62332-1

Defendant Klein Exhibit DU

584

EXHIBIT A

TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

10 LIGHT STREET

BALTIMORE 2, MD.

OFFICE OF
INTERNAL REVENUE AGENT IN CHARGE
BALTIMORE DIVISION
835 O'Sullivan Building

March 10, 1948

Mrs. Gertrude Klein,
3610 Clarinth Road,
Baltimore 15, Maryland.

Dear Mrs. Klein:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944, December 31, 1945 and December 31, 1946 discloses a deficiency of $450,212.58, as shown in the statement attached. Said deficiency has been assessed under the provisions of the internal revenue laws applicable to jeopardy assessments.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States for a redetermination of the deficiency.

Very truly yours,

Geo. J. Schoeneman,

Commissioner,

By J. C. Wilmer
Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver - 870

Defendant Klein Exhibit DV

580

Defendant Klein Exhibit DV

587

STATEMENT

Mrs. Gertrude Klein
3610 Clarinth Road
Baltimore 15, Maryland

Tax Liability for the Taxable Years Ended

December 31, 1944
December 31, 1945
December 31, 1946

Income Tax

	Deficiency
1944	$33,011.66
1945	205,855.47
1946	211,345.45
Total	$450,212.58

The determination of your income tax liability has been made upon the basis of information on file with the Bureau of Internal Revenue.

Your net income for the taxable years 1944, 1945 and 1946 has been determined in the respective amounts of $60,053.54, $246,602.86 and $278,933.61 in lieu of the amounts reported in your returns.

Taxable Year Ended December 31, 1944

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$10,013.82
Unallowable deductions and additional income	
(a) Net income	50,039.72
Net income adjusted	$60,053.54

EXPLANATION OF ADJUSTMENTS

(a) Net income

Corrected net income	$60,053.54
Net income reported on your return	10,013.82
Understatement of income	$50,039.72

Form 1276
TREASURY DEPARTMENT
Internal Revenue Service
November 1942

NOTICE

APPEALS SHOULD BE ADDRESSED TO
THE TAX COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

IF YOU DECIDE TO INITIATE A PROCEEDING BEFORE THE TAX COURT OF THE UNITED STATES, your petition and proofs in the proceeding must be in accordance with the rules of practice of this court. Under the Revenue Acts of 1926, 1928 and 1932, the Revenue Acts of 1934, 1936, and 1938, the Internal Revenue Code, and the rule of the Tax Court, a petition (together with a filing fee of $10.00) must be mailed in sufficient time or filed so as to be RECEIVED BY THE TAX COURT, at its principal address Washington, D. C., within the number of days indicated in attached notice after the attached registered notice is mailed (not counting Saturday, Sunday or legal holiday in the District of Columbia as the last day of the time specified).

The Tax Court of The United States is in no way connected with the Bureau of Internal Revenue or the Treasury Department. Under no circumstances should a petition for redetermination be forwarded to the Commissioner of Internal Revenue or a collector of internal revenue.

Defendant Klein Exhibit DV

585

Mrs. Gertrude Klein

Statement - 3

COMPUTATION OF INCOME TAX - ALTERNATIVE METHOD

Net income adjusted	$246,602.86	
Less: Excess of net long-term capital gain over net short-term capital loss	559.75	
Ordinary net income	$246,043.11	
Less: Surtax exemptions	500.00	
Balance (surtax net income)	$245,543.11	
Surtax on $245,543.11		$198,264.23
Ordinary net income	$246,043.11	
Less: Normal-tax exemption	500.00	
Balance subject to normal tax	$245,543.11	
Normal tax on $245,543.11 at 3%		7,366.29
Partial tax		$205,630.52
50% of excess of net long-term capital gain over net short-term capital loss		279.87
Income tax liability		$205,910.39
Income tax liability disclosed by return, Original Account No. 7605634		54.92
Deficiency of income tax		$205,855.47

Taxable Year Ended December 31, 1946

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$13,725.92
Unallowable deductions and additional income	
(a) Net income	265,207.69
Net income adjusted	$278,933.61

Mrs. Gertrude Klein — Statement - 4

EXPLANATION OF ADJUSTMENTS

(a) Net income

Corrected net income	$278,933.61	
Net income reported on your return	13,725.92	
Understatement of income	$265,207.69	

COMPUTATION OF INCOME TAX - ALTERNATIVE METHOD

Net income adjusted	$278,933.61	
Less: Excess of net long-term capital gain over net short-term capital loss	4,687.58	
Ordinary net income	$274,246.03	
Less: Exemption	500.00	
Ordinary net income	$273,746.03	
Combined normal and surtax		$223,928.89
Less: 5% of $223,928.89		11,196.44
Partial tax		$212,732.45
50% of excess of net long-term capital gain over net short-term capital loss		2,343.79
Income tax liability		$215,076.24
Income tax liability disclosed by return, Original Account No. 3011975		3,730.79
Deficiency of income tax		$211,345.45

Baltimore Division
90-D.

Form 870
TREASURY DEPARTMENT
Internal Revenue Service
(Revised June 1941)

Mrs. Gertrude Klein
3610 Clarinth Road
Baltimore 15, Maryland

Maryland
(DATE RECEIVED)

Defendant Klein Exhibit DV

590

Baltimore Division
90-D.

Form 870
TREASURY DEPARTMENT
Internal Revenue Service
(Revised June 1941)

Mrs. Gertrude Klein
3610 Clarinth Road
Baltimore 15, Maryland

Maryland

(DATE RECEIVED)

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

taxable year ended December 31, 1944 income tax in the sum of $ 33,011.66

taxable year ended December 31, 1945 income tax in the sum of $ 205,855.47

taxable year ended December 31, 1946 income tax in the sum of $ 211,345.45

taxable year ended _____ (declared value) excess-profits tax in the sum of $_____

taxable year ended _____ excess profits tax in the sum of $_____

taxable year ended _____ in the sum of $_____

amounting to the total sum of $ 450,212.58

together with interest thereon as provided by law.

_____
(Taxpayer)

_____
(Taxpayer)

_____
(Address)

Date _____ By _____

NOTE.—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which

Baltimore Division
90-D.

Form 870
TREASURY DEPARTMENT
Internal Revenue Service
(Revised June 1941)

Mrs. Gertrude Klein
3610 Clarinth Road
Baltimore 15, Maryland

Maryland

(DATE RECEIVED)

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

taxable year ended December 31, 1944 income tax in the sum of $ 33,011.66

taxable year ended December 31, 1945 income tax in the sum of $ 205,855.47

taxable year ended December 31, 1946 income tax in the sum of $ 211,345.45

taxable year ended _____ (declared value) excess-profits tax in the sum of $_____

taxable year ended _____ excess profits tax in the sum of $_____

taxable year ended _____ in the sum of $_____

amounting to the total sum of $ 450,212.58

together with interest thereon as provided by law.

This copy to be retained by taxpayer.

_____
(Taxpayer)

_____
(Taxpayer)

_____
(Address)

Date _____ By _____

NOTE.—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature

592

Defendant Klein Exhibit DV

Defendant Klein Exhibit DW

COMPUTATION OF INCOME TAX

Net income adjusted	$60,053.54	
Less: Surtax exemption	500.00	
Balance (surtax net income)	$59,553.54	
Surtax on $59,553.54		$33,985.16
Net income adjusted	$60,053.54	
Less: Normal-tax exemption	500.00	
Balance subject to normal tax	$59,553.54	
Normal tax on $59,553.54 at 3%		1,786.61
Income tax liability		$35,771.77
Income tax liability disclosed by return, Original Account No. 3004748		2,760.11
Deficiency of income tax		$33,011.66

Taxable Year Ended December 31, 1945

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return	$738.80
Unallowable deductions and additional income	
(a) Net income	245,864.06
Net income adjusted	$246,602.86

EXPLANATION OF ADJUSTMENTS

(a) Net income

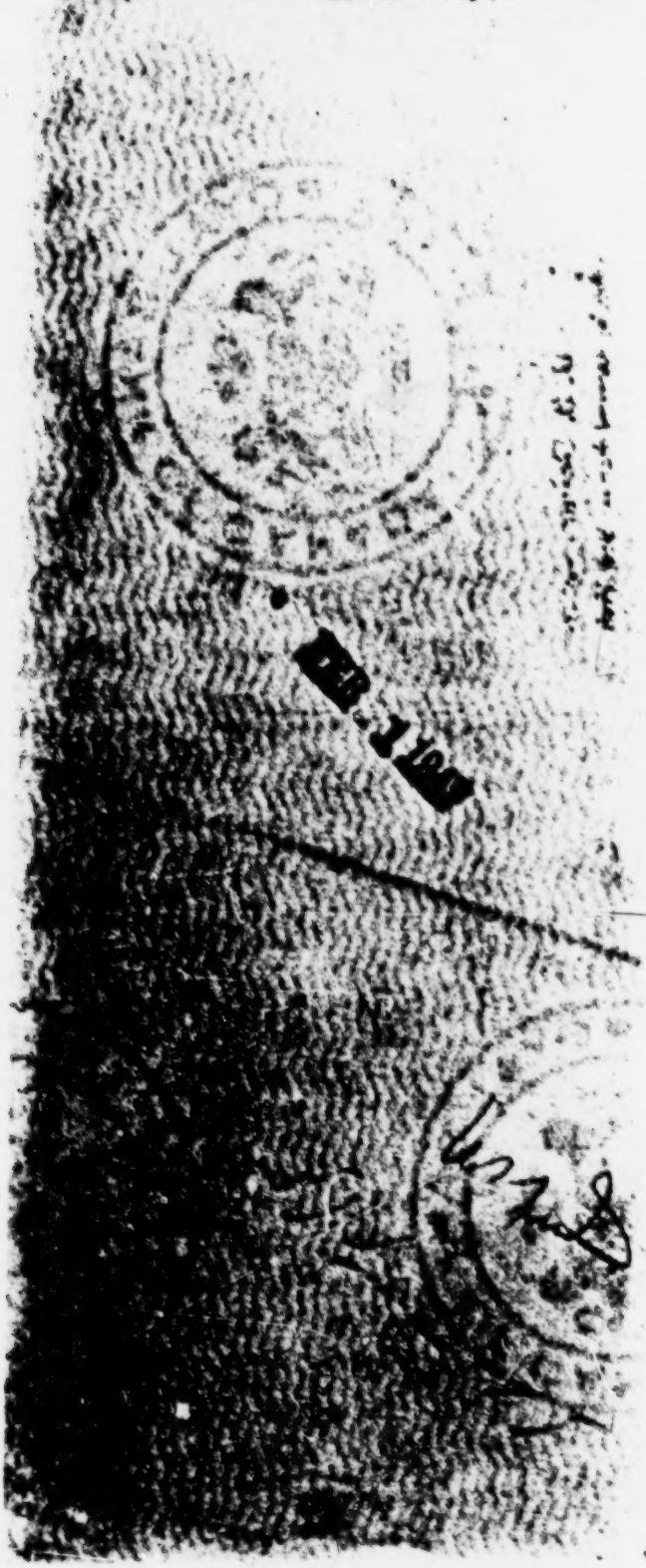
Corrected net income	$246,602.86
Net income reported on your return	738.80
Understatement of income	$245,864.06

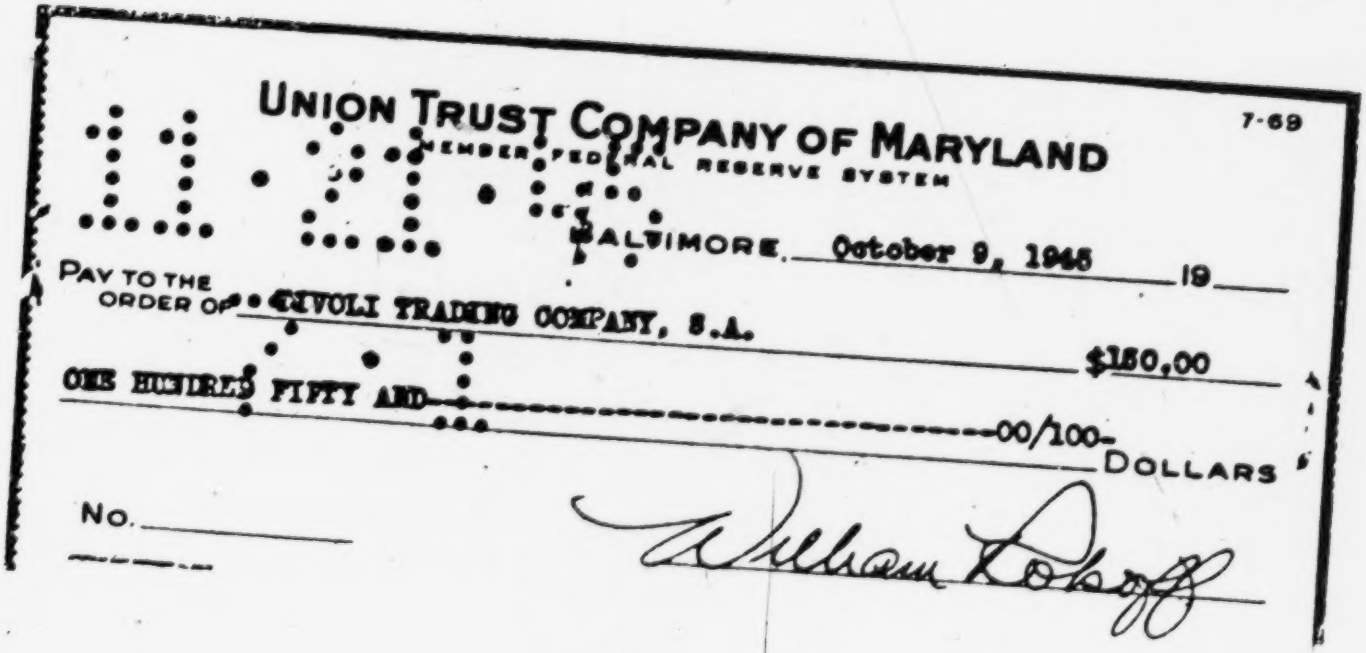
Defendant Klein Exhibit DV 588

Defendant Klein Exhibit DW

FOR DEPOSIT ONLY TO THE CREDIT OF

THE SEABOARD SYNDICATE, S. A.





UNION TRUST COMPANY OF MARYLAND

7-69

MEMBER FEDERAL RESERVE SYSTEM

BALTIMORE October 9, 1945 19

PAY TO THE ORDER OF GIVOLI TRADING COMPANY, S.A.

$150.00

ONE HUNDRED FIFTY AND 00/100- DOLLARS

No.

William Lobaff

Defendant Klein Exhibit DX

Defendant Klein Exhibit DX

FOR DEPOSIT ONLY TO ACCOUNT

TIVOLI TRADING CO. S.A.

KL DX

PAY TO THE ORDER OF

ANY BANK OR BANKER

PRIOR ENDORSEMENTS GUARANTEED

NOV 20 1945

The Royal Bank of Canada

NEW YORK CITY

NORMAN B. HART

EDWARD C. HALLMAN } AGENTS

1

Defendant Klein Exhibit DY

Received from the Tivoli Trading Co., S. A.

ONE HUNDRED FIFTY DOLLARS ($150.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

William Rokoff
William Rokoff

DEFENDANT'S
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
JUN 15

Defendant Klein Exhibit DY

Exh 2C Ident
11/4/53 JJ

Received from the Tivoli Trading Co., S. A.

FIVE HUNDRED DOLLARS ($500.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

Morris O. Alprin

Defendant Klein Exhibit DY

eceived from the Tivoli Trading Co., S. A.

FIVE HUNDRED DOLLARS ($500.00)

epayment in full for subscription to Capital

tock, said subscription having been cancelled.

I. A. Koerner

10/7/53

Defendant Klein Exhibit DY

ved from the Tivoli Trading Co., S. A.

NE THOUSAND DOLLARS ($1,000.00)

ment in full for subscription to Capital

, said subscription having been cancelled.

Albert Roer

Albert Roer

Defendant Klein Exhibit DY

Ch 2P Ident 2/11/53

Received from the Tivoli Trading Co., S.A.

TWO HUNDRED DOLLARS ($200.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

Ellis Rosenberg

Ellis Rosenberg

Defendant Klein Exhibit DY

Plch & B Ident 19/4/5-38

Received from the Tivoli Trading Co., S. A.

ONE HUNDRED DOLLARS ($100.00)

repayment in full for subscription to Capital Stock, said subscription having been cancelled.

Harry Silver

Harry Silver

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 BROADWAY

U.S. Dist. Court
S.D. of N.Y.
MAR 9 1956

Defendant Alprin Exhibit EG

NEW YORK October 3rd 1945 No. 1199

THE CHASE NATIONAL BANK 13

OF THE CITY OF NEW YORK

FIFTY SEVENTH ST. BRANCH, 143 WEST 57TH ST.

PAY TO THE ORDER OF Tivoli Trading Co., S. A. $500.00/100

* * * * * FIVE HUNDRED and 00/100 * * * * * * * * * * * * * * DOLLARS

Morris Alprin

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 BROADWAY

BANKAMA BANKERS SUBSCRIPTION COMPANY
OR THEIR PROCEEDS THE
NEW YORK PUBLIC SERVICE ISSUE
NOV 20 1945
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK

FOR DEPOSIT ONLY TO ACCOUNT OF
TIVOLI TRADING CO. S.A.

DEFENDANTS
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
JUN 1955

A
EGH

Defendant Roer Exhibit EH

BROOKLYN, N. Y. Sept 25 1945 No. 1342

CHARTERED 1899

75

Bank of the Manhattan Company 1-2

4622-13TH AVENUE, BROOKLYN, N. Y.

1640-50TH STREET

PAY TO THE ORDER OF Tivoli Trading Co. S.A. $1000 00/100

One Thousand 00/ DOLLARS

P (E.F.)

A. Roer

Defendant Roer Exhibit EH

FOR DEPOSIT ONLY TO ACCOUNT OF

TIVOLI TRADING CO. S.A.

Def Ex

UNITED STATES OF AMERICA

OFFICE OF PRICE ADMINISTRATION

EXHIBIT A

Subpoena Duces Tecum

To: E. C. Malahan, Agent, Royal Bank of Canada, New York City Agency
68 William Street
New York City, N. Y.

At the instance of the Price Administrator, Office of Price Administration, you are hereby required to appear before Louis L. Redding, Chief, Groceries Unit, Regional Food Enforcement Section, Region II, of the Office of Price Administration, at 280 Fifth Avenue, in the City of New York, State of New York on the 26th day of September, 1946, at 10 o'clock A. M. of that day, to testify concerning matters connected with an investigation being conducted by the Office of Price Administration on the enforcement of price regulations and orders, etc.

And you are hereby required to bring with you and produce at said time and place the following documents:

(1) All books, records and correspondence pertaining to the accounts of
R. C. Williams & Company, Inc., 265 Tenth Avenue, New York, New York
Agencias Destiladores, S. A., Havana, Cuba
Compagnia Ramsey Scott Exportadores, S. A., of Cuba, Havana, Cuba
Financiera Lloyds, S. A.
The Seaboard Syndicate, S. A.

(2) All records of payment and disbursement which appear in the accounts of
R. C. Williams & Company, Inc., 265 Tenth Avenue, New York, New York
Agencias Destiladores, S. A., Havana, Cuba
Compagnia Ramsey Scott Exportadores, S. A., of Cuba, Havana, Cuba
Financiera Lloyds, S. A.
The Seaboard Syndicate, S. A.

DEFENDANTS KC EXHIBIT 6
U. S. Dist. Court
S. D. of N. Y.
JUL 27 1955

FAIL NOT AT YOUR PERIL

IN WITNESS WHEREOF, the undersigned, Price Administrator of the Office of Price Administration, has hereunto set his hand at

this 16 day of September, 1946

JAMES L. MEADER
Regional PRICE ADMINISTRATOR

NOTICE TO WITNESS: If claim is made for witness fee or mileage, this subpoena should accompany voucher.

Defendant Klein Exhibit EO

RETURN OF SERVICE

I CERTIFY that a duplicate original of the within subpoena was duly served*

[X] on the person named therein.

[ ] by leaving the said original at the principal office or place of business of the person named therein, to wit, at:

.....

on the 18 day of September, , 1946

Raymond L. Brewster
(PERSON MAKING SERVICE)

Accountant
(TITLE)

*Check method used.

CERTIFICATION OF ATTENDANCE

I CERTIFY that the person named herein was in attendance as a witness at

.....

on .....
(DATE OR DATES OF ATTENDANCE)

.....
(PERSON CERTIFYING)

.....
(TITLE)

OPA FORM 2915-2 BACK

U. S. GOVERNMENT PRINTING OFFICE 16—63135

Form 860-A
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised May 1939

SUMMONS TO APPEAR, TO TESTIFY, AND TO PRODUCE BOOKS, ETC.

Defendant Klein Exhibit EP

In the matter of the tax liability of
R. C. Williams & Co. Inc; New York - Cia Ramsey Scott Exportadoras, S.A.
Agencias Destiladoras, S.A., Havana, Cuba and Hyman Harvey Klein, Baltimore, Md.

District of New York

*for the year*s 1944 to date

DEFENDANT'S EXHIBIT
U.S. District Court
S.D. of N.Y.
APR 27 1955

The Commissioner of Internal Revenue

To Royal Bank of Canada, New York Agency

Residing at 68 William Street, New York, N. Y.

GREETING:

You are hereby summoned and required to appear before the undersigned Special Agent of the Bureau of Internal Revenue, at 253 Broadway, New York 7, N. Y., Room 801

on the 6th *day of* June, *at* 2 *o'clock in the* afternoon, *to give testimony in the matter of the tax liability of the above-named person for the years designated, and directed to bring with you the following books and papers:*

ALL books, papers, records and memoranda, of whatsoever nature or kind, relating to all accounts, transactions and dealings with, for, or on behalf of the names listed on the attached sheet, together with any other accounts in which the officers of the business enterprises listed herein are interested, and in particular, transcripts of the accounts, signature cards, resolutions, powers of attorney, deposit tickets and records of debits appearing in such accounts.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States for the district in which you reside, to compel your attendance, testimony, and production of books, etc.

Issued under authority of Section 3614 of the Internal Revenue Code, this 16th *day of* June 1947, *19*

Thomas J. Victory, *Special Agent.*
Rector 2-7373, extension 288

Form 880-A
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised May 1939

SUMMONS TO APPEAR, TO TESTIFY, AND TO PRODUCE BOOKS, ETC.

In the matter of the tax liability of
R. C. Williams & Co. Inc; New York - Cia Ramsey Scott Exportadoras, S.A. Agencias Destiladoras,S.A., Havana, Cuba and Hyman Harvey Klein, Baltimore, Md.

District of New York

for the year s 1944 to date

The Commissioner of Internal Revenue

To Royal Bank of Canada, New York Agency

~~*Residing at*~~ 68 William Street, New York, N. Y.

GREETING:

You are hereby summoned and required to appear before the undersigned Special Agent of the Bureau of Internal Revenue, at 253 Broadway, New York 7, N. Y., Room 801 *on the* 18TH *day of* June *, at* 2:30 *o'clock in the* afternoon, *to give testimony in the matter of the tax liability of the above-named person for the years designated, and directed to bring with you the following books and papers:*

ALL books, papers, records and memoranda, of whatsoever nature or kind, relating to all accounts, transactions and dealings with, for, or on behalf of the names listed on the attached sheet, together with any other accounts in which the officers of the business enterprises listed herein are interested, and in particular, transcripts of the accounts, signature cards, resolutions, powers of attorney, deposit tickets and records of debits appearing in such accounts.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States for the district in which you reside, to compel your attendance, testimony, and production of books, etc.

Issued under authority of Section 3614 of the Internal Revenue Code, this 18th *day of* June *, 1947.*

Howard L. English

Howard L. English, *Special Agent.*
Rector 2-7373, Extension 288

Defendant Alprin Exhibits EI, EJ, EK and EL

English translations of the certificates of incorporation of Aguila, Economica, Apolo and Marte, respectively, all dated June 29, 1946.

Defendant Klein Exhibit EP

EXCERPTS FROM THE INTERNAL REVENUE CODE

SEC. 3614. (*a*) The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(*b*) The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

SEC. 3633. (*a*) If any person is summoned under the internal-revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

Royal Bank of Canada, New York Agency
68 William Street New York.N.Y.

Agencias Destiladoras,S.A. ✓	Havana, Cuba
Cia. Ramsey Scott Exportadoras S.A. ✓ X	Havana, Cuba
~~Expertadora Kent S.A.~~ ✓	~~Havana, Cuba~~
Cameron Stuart & Co Ltd ✓	Panama, Republic of Panama
Regan Potter & Co Ltd S.A. ✓	" " " "
Financiera Lloyds S.A. ✓	Havana, Cuba
The Seaboard Syndicate S.A. ✓	Panama, Republic of Panama
~~United Distillers (of Canada) Ltd~~ ✓	~~Vancouver, B.C.~~

Defendant Klein Exhibit EP

611

Defendant Klein Exhibit EP

EXCERPTS FROM THE INTERNAL REVENUE CODE

SEC. 3614. (*a*) The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(*b*) The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

SEC. 3633. (*a*) If any person is summoned under the internal-revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

16—6288-1 GPO

Royal Bank of Canada, New York Agency
68 William Street New York, N. Y.

Agencias Destiladoras, S. A.	Havana, Cuba
Cia. Ramsey Scott Exportadoras S. A.	Havana, Cuba
Cameron Stuart & Co. Ltd	Panama, Republic of Pana
Regan Potter & Co Ltd S. A.	" " " "
Financiera Lloyds S. A.	Havana, Cuba
The Seaboard Syndicate S. A.	Panama, Republic of Pana

4731

SUMMONS TO APPEAR, TO TESTIFY, AND TO PRODUCE BOOKS, ETC.

In the matter of the tax liability of

R. O. Williams & Co.Inc., New York - Cia Ramsey Scott Exportadoras, S.A. Agencias Destiladoras, S.A., Havana, Cuba, and Hyman Harvey Klein, Baltimore, Md.

District of New York

for the year 1944, to date, ..., ...

The Commissioner of Internal Revenue

To Royal Bank of Canada, New York Agency

~~Residing~~ at 68 William Street, New York, N. Y.

GREETING:

You are hereby summoned and required to appear before the undersigned Special Agent of the Bureau of Internal Revenue, at 253 Broadway, New York, N. Y., Room 801

on the forthwith *day of* ....., *at* ..... *o'clock* ~~in the~~ ..... *noon, to give testimony in the matter of the tax liability of the above-named person for the years designated, and directed to bring with you the following books and papers:*

All books, papers, records and memoranda, of whatsoever nature or kind, relating to all accounts, transactions and dealings with, for, or on behalf of the names listed on the attached sheet, together with any other accounts in which the officers of the business enterprises herein listed are interested, and in particular, transcripts of the accounts, signature cards, resolutions, powers of attorney, deposit tickets and records of debits appearing in such accounts.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States for the district in which you reside, to compel your attendance, testimony, and production of books, etc.

Issued under authority of Section 3614 of the Internal Revenue Code, this 15th *day of* July, 1947

Thomas J. Victory, Special Agent
Rector 2-7373
extension 288

Defendant Klein Exhibit EP

EXCERPTS FROM THE INTERNAL REVENUE CODE

SEC. 3614. (*a*) The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(*b*) The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

SEC. 3633. (*a*) If any person is summoned under the internal-revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

16—83386-1 GPO

Royal Bank of Canada, New York Agency
68 William Street, New York, N. Y.

The Cascade Securities Co. Ltd.

Compania Continental S.A.

X John Dunbar & Co. Ltd. S.A.

X Exportadora de la Costa, S.A.

Hannes & Co. S.A.

Nancy Trading Co. Inc.

X Tivoli Trading Co. S.A.

X Waldorf & Co. Ltd., S.A.

? X Compania Commercial La Ribera, S.A.

La Econonica Agencies, S.A.

La Importadora Marte, S.A.

El Aquita Exportadora S.A.

Parsee Incorporated

X Ostrow Y Compania Exportadores S.A.

Explotadora De Inmuebles Y Valores S.A.

X Exportadores Aliados, S.A.

X Associated Factors, S.A.

X Douglas Ryan Syndicate S.A.

X Angus Kirby (Panama) Ltd. S.A.

X " " & Co. Exportadoras, S.A.

Victory Special Agent 7/15/47 [illegible]

John Dunbar & Co Exporters & Importers Inc. Special Acct.
Ostrow Y Compania Exportadores S.A., Special Acct.
Inversionistas Asociados S.A.

Defendant Klein Exhibit ER

No. 1 ..... -1- Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 109, Entry on 35,508

This is to certify that [illegible] is the owner of

[illegible] fully paid and non-assessable shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED December 31st., 1945.-

PRESIDENT

SECRETARY

CANCELLED MAR 27 1947

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto Hannes & Co Ltd S.A.

_____ Shares

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____

Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated March 26 1947.

Hyman Harvey Klein

In presence of

William Lopez

CANCELLED
MAR 27 1947
CANCELLED

DEFENDANT'S
EXHIBIT
S. Dist. Court
S. D. of N. Y.
JUL 27 1955

Defendant Klein Exhibit ER

FOR VALUE RECEIVED, I, [illegible] have sold, assigned and transferred, [illegible] sell, assign and transfer [illegible] all my right, title and interest [illegible] to [illegible] of the capital stock of TIVOLI [illegible] COMPANY, [illegible], corporation of the Republic of Panama, and I [illegible] authorize and empower the Treasurer or Secretary of [illegible] corporation to register this transfer on the books of [illegible] company.

WITNESS my hand and seal, this 11th day of April, [illegible].

Sydney Jouly [illegible]

DEFENDANT'S

EXHIBIT
U. S. Dist. Court
S. D. of N. Y
JUL 27 1955

Defendant Klein Exhibit EQ

..., ..., have ..., ...,

..., ..., ...,

... ...

Defendant Klein Exhibit ES

No. 2 -1- Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 109, Entry on 55,508

This is to certify that EALIS ROSENBERG is the owner of

fully paid and non-assessable shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED December 31st., 1945.-

PRESIDENT

SECRETARY

CANCELLED MAR 27 1947

FOR VALUE RECEIVED, I, the undersigned, hereby assign the within Certificate of Stock, and all my right, title and interest in and to the same, to Hyman Harvey Klein.-

Ellis Rosenberg

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto Hannes & Co Ltd S.A

Shares

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated March 26 1947

Hyman Harvey Klein

In presence of

William Rosoff

CANCELLED MAR 27 1947

DEFENDANTS EXHIBIT U. S. Dist. Court S. D. of N. Y. JUL 27 1955

Defendant Klein Exhibit ES

623

Defendant Klein Exhibit ET

No. 317 WASHINGTON, D.C. October 15, 1945

THE MUNSEY TRUST COMPANY (3-8)

MUNSEY BUILDING

PAY TO THE ORDER OF Tivoli Trading Co. S.A. $200.00

Two Hundred and No/100 DOLLARS

Ellis Rosenberg

FOR DEPOSIT ONLY TO ACCOUNT OF

TIVOLI TRADING CO. S.A.

Defendant Klein Exhibit ET

Defendant Klein Exhibit EU

No. 1 ---500--- Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 109, Entry on 35508

This is to certify that MORRIS O. ALPRIN is the owner of

FIVE HUNDRED---------- fully paid and non-assessable

shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED November 26, 1945

PRESIDENT

SECRETARY

627

Defendant Klein Exhibit EU

No. 2 ---500--- Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 199, Entry on 35508

This is to certify that I. A. KOERNER is the owner of

FIVE HUNDRED---------- fully paid and non-assessable

shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED November 26, 1945

PRESIDENT

SECRETARY

No. 2 ---500--- Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 133, Folio 193, Entry on 30503

This is to certify that J. A. KOENIG is the owner of

FIVE HUNDRED fully paid and non-assessable

shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED November 22, 1946

PRESIDENT SECRETARY

.....Shares,

INCORPORATED UNDER THE LAW OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

...the Public Record Office of the Republic of Panama in the Mercantile Registry, Section ... Book..... Folio..... Entry on .....

...certify that.....is the owner of .....fully paid and non-assessable ... par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., ... Corporation, transferable in person or by duly authorized attorney upon the books of the ... upon the surrender of this certificate properly endorsed.

DATED .....

PRESIDENT .....

SECRETARY .....

No. 4 ----400---Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 109, Entry on 35508

This is to certify that H. S. LECHTZIER is the owner of

FOUR HUNDRED---------- fully paid and non-assessable

shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED November 26, 1945

PRESIDENT

SECRETARY

No. 5 ---200---- Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 109, Entry on 35508

This is to certify that ELLIS ROSENBERG is the owner of

TWO HUNDRED---------- fully paid and non-assessable

shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED November 26, 1945

PRESIDENT

SECRETARY

Defendant Klein Exhibit EU

No. 6 ---100------ Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 109, Entry on 35508

This is to certify that HARRY SILVER is the owner of

ONE HUNDRED---------- fully paid and non-assessable shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED November 26, 1945

PRESIDENT

SECRETARY

Defendant Klein Exhibit EU

No. 7 ---150---- Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $1.00, PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book 138, Folio 109, Entry on 35508

This is to certify that WILLIAM ROKOFF is the owner of

ONE HUNDRED AND FIFTY---------- fully paid and non-assessable shares of the par value of one ($1.00) dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED November 26, 1945

Willie Rokoff

PRESIDENT

SECRETARY

Defendant Klein Exhibit EV

MINUTES OF MEETING OF DIRECTORS
OF
TIVOLI TRADING COMPANY, S. A.

—oOo—

A Board of Directors Meeting of Tivoli Trading Company, S. A., a corporation organized under the laws of the Republic of Panamá, was held at 411 Aguiar Street, Havana, Cuba, on Monday, December thirty-first one thousand nine-hundred and forty-five at ten-fifteen o'clock a. m.

There were present at this Meeting:

Hyman Harvey Klein (represented by proxy to Jaime Cabarrocas, dated December 4th., 1945.)

Albert Roer (represented by proxy to Francisco Gurri, dated December 4th., 1945.)

Ellis Rosenberg

On motion duly made and seconded Jaime Cabarrocas was appointed Chairman of the Meeting and Ellis Rosenberg was appointed Secretary of the Meeting.

The Chairman announced that Mr. Hyman Harvey Klein has subscribed to two thousand eight hundred and fifty (2,850) Shares of the Common Stock of this Company and that there has been paid into the Company by him two thousand eight hundred and fifty dollars ($2,850.00) for this Stock. The Chairman also called to the attention of the Meeting that there are outstanding two (2) assignments of one (1) share each of qualifying shares of Stock originally issued upon the incorporation

of this Company, April eleventh, one thousand nine hundred and forty five; one of these assignments being for one share issued to Sidney Jocelyn Williams and assigned by him April eleventh, one thousand nine hundred and forty five to Ellis Rosenberg. The other assignment being for one share issued to Octavio Fábrega and assigned by him April eleventh, one thousand nine hundred and forty five to Hyman Harvey Klein.

Thereupon, the Chairman announced it was in order to issue two thousand eight hundred and fifty (2,850) Shares of the Common Stock of this Company to Hyman Harvey Klein in payment of his subscription for said stock; and also to issue to Hyman Harvey Klein one certificate for one share of Common Stock of this Company in return for deposit of his assignment of transfer of subscription for said one share as above noted; and to issue to Ellis Rosenberg one certificate for one share of Common Stock of this Company in return for deposit of his assignment of transfer of subscription for said one share as above noted. Upon motion duly made and seconded it was unanimously ordered that one certificate of stock of this Company be issued to Hyman Harvey Klein for two thousand eight hundred and fifty (2,850) shares of the Common Stock of this Company and also one certificate to Hyman Harvey Klein for one share of Common Stock of this Company and also one certificate to Ellis Rosenberg for one share of Common Stock of this Company.

There being no further business to come before the Meeting the same was adjourned.

JAIME CABARROCAS — ELLIS ROSENBERG

....

Chairman. — Secretary

Defendant Klein Exhibit EV

KNOW ALL MEN BY THESE PRESENTS

That, the undersigned, ALBERT ROER Director of TIVOLI TRADING COMPANY, S. A. in English does hereby nominate, appoint and constitute Mr. FRANCISCO GURRI as his proxy for him and in his name to represent him and vote at the Special Meeting of the Board of Directors of said Company to be held on December thirty-first, one thousand nine hundred and forty-five, or at any other such meeting held before the date hereinafter indicated, and to act for him in his name and stead with respect to the meeting of Directors, with the same force and effect as if the undersigned were personally present, giving to said Mr Francisco Gurri full power of substitution and revocation.

This proxy is to continue in force until the second day of January, one thousand nine hundred and forty six, unless sooner revoked.

In Witness Whereof, the undersigned has hereunto set his hand this fourth day of December, one thousand nine hundred and forty-five.

ALBERT ROER

Defendant Klein Exhibit EV

KNOW ALL MEN BY THESE PRESENTS

That, the undersigned, HYMAN HARVEY KLEIN Director of TIVOLI TRADING COMPANY, S. A. in English does hereby nominate, appoint and constitute Mr. Jaime Cabarrocas as his proxy for him and in his name to represent him and vote at the Special Meeting of the Board of Directors of said Company to be held on December thirty-first, one thousand nine hundred and forty-five, or at any other such meeting held before the date hereinafter indicated, and to act for him and in his name and stead with respect to the meeting of Directors, with the same force and effect as if the undersigned were personally present, giving to said Mr. Jaime Cabarrocas full power of substitution and revocation.

This proxy is to continue in force until the second day of January one thousand nine hundred and forty-six, unless sooner revoked.

In Witness Whereof, the undersigned has hereunto set his hand this twenty-first day of December, one thousand nine hundred and forty-five.

H. H. KLEIN

No..... ..... Shares

INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF PANAMA

TIVOLI TRADING CO., S. A.

CAPITAL STOCK:

AUTHORIZED 10,000 SHARES OF $100 PAR VALUE

Registered in the Public Record Office of the Republic of Panama in the Mercantile Registry, Section of Persons, Book..... Folio..... No. Entry on

This is to certify that.....is the owner of

.....fully paid and non-assessable shares of the par value of one hundred dollar of the Capital stock of TIVOLI TRADING CO. S. A., a Panamanian Corporation, transferable in person or by duly authorized attorney upon the books of the Corporation upon the surrender of this certificate properly endorsed.

DATED

CANCELLED MAR 27 1947

CANCELLED MAR 27 1947

CANCELLED MAR 27 1947

FOR VALUE RECEIVED, I hereby ll, assign and transfer

unto Hannes Alo Ltd S.A

Shares

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated March 26 1947.

In presence of

William Rokoff

Hyman Harvey Klein

CANCELLED
MAR 27 1947

DEFENDANTS
EXHIBIT
U.S. Dist. Court
S.D. of N.Y.
JUL 27 1955

Defendant Klein Exhibit EIV

Defendant Klein Exhibit EX

H. H. KLEIN

No. 100 NEW YORK March 1, 1941 - 19

CENTRAL HANOVER BANK AND TRUST COMPANY

34th STREET AT MADISON AVENUE, NEW YORK, N.Y.

PAY TO THE ORDER OF COLLECTOR OF INTERNAL REVENUE $ 300,000.00

EXACTLY D9248 $300000 AND 00 CTS DOLLARS

Defendant Klein Exhibit EX

Defendant Klein Exhibit EX

H. H. KLEIN

No. 101 NEW YORK June 5, 1947 19

CENTRAL HANOVER BANK AND TRUST COMPANY 1-33

34th STREET AT MADISON AVENUE, NEW YORK, N. Y.

PAY TO THE ORDER OF COLLECTOR OF INTERNAL REVENUE $ 300,000.00

EXACTLY [illegible] 300000 AND 00 CTS DOLLARS

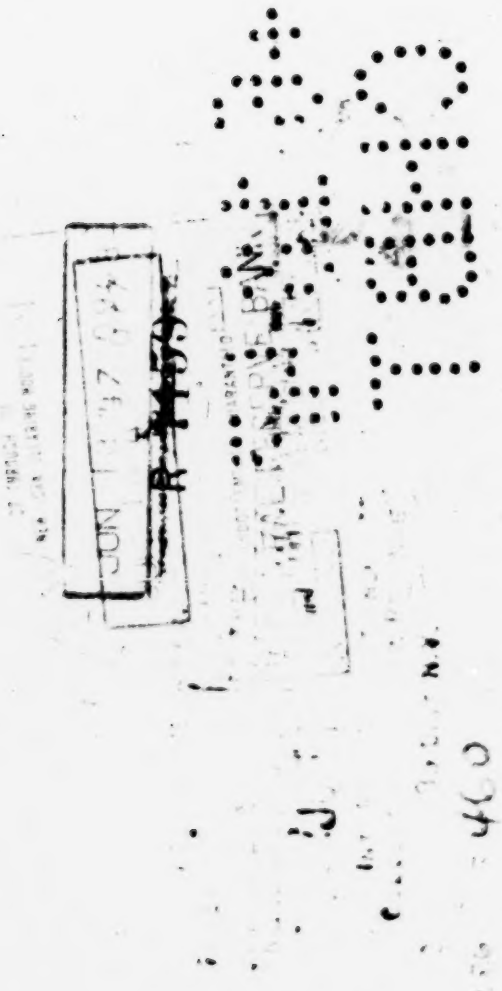
50525

CHK

COLLR. INT. REV.
3rd DIST. N. Y.
N. P. 1120

235

Defendant Klein Exhibit EX



No. 104 NEW YORK September 9, 19 47

CENTRAL HANOVER BANK AND TRUST COMPANY 1-33

54th STREET AT MADISON AVENUE, NEW YORK, N. Y.

H. H. KLEIN

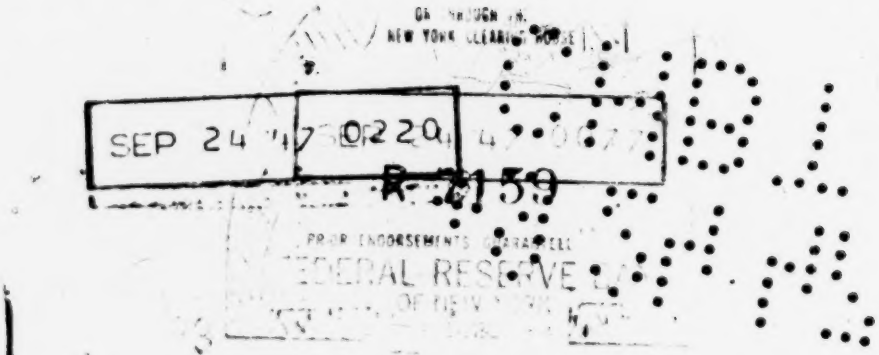
THIS CHECK IS PAYABLE TO THE ORDER OF AND MUST BE PAID AT PAR

COLLECTOR OF INTERNAL REVENUE $ 300,000.00

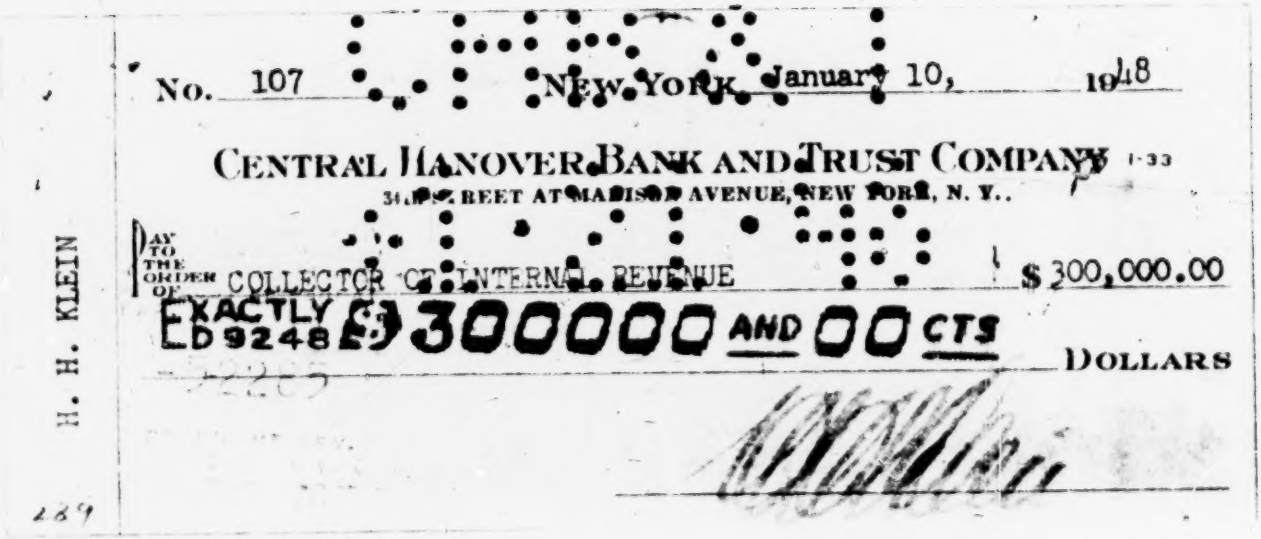
EXACTLY $ 300000 AND 00 CTS DOLLARS

-5-1416

COLLR. INT. REV.
3RD DIST. N.Y.
N.P. 120


SEP 24
0220
R-2159
PRIOR ENDORSEMENTS GUARANTEED
FEDERAL RESERVE

H. H. KLEIN



No. 107 NEW YORK, January 10, 1948

CENTRAL HANOVER BANK AND TRUST COMPANY 1-33

34th STREET AT MADISON AVENUE, NEW YORK, N. Y.

PAY TO THE ORDER OF COLLECTOR OF INTERNAL REVENUE $ 300,000.00

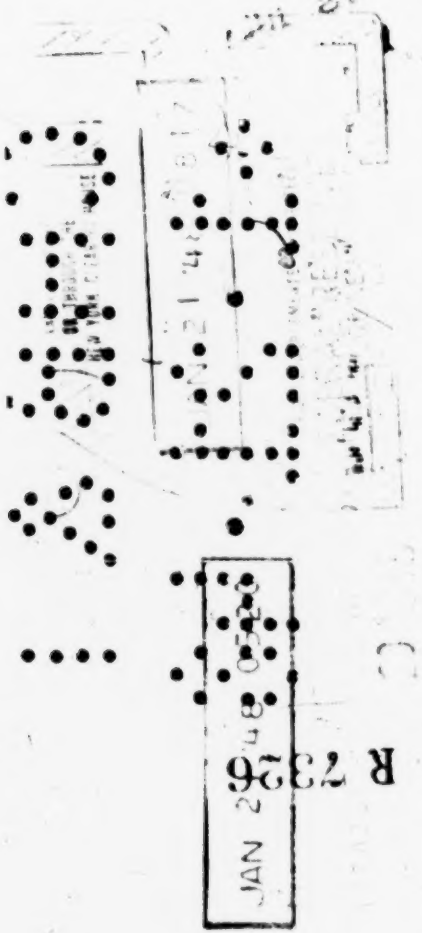
EXACTLY 300000 AND 00 CTS DOLLARS

D 9248

289

Defendant Klein Exhibit EX

DEFENDANT
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
Jan 27 1955.



JAN 21 '48 0520
R 7326

Defendant Klein Exhibit EY

Defendant Klein Exhibit EY

Form 1—(Revised Oct. 1944)
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

RECEIPT FOR PAYMENT OF TAXES

1947 INCOME TAX
(Class of tax)

Collector's Office ....., *District of* MARYLAND

AC-7-590209(49)
(Description of collection: tax, penalty, interest, or offer in compromise, etc.)

at ..... *Date* .....

(NAME AND ADDRESS OF TAXPAYER)

Hyman H. Klein
℅ Mr. Joseph H. A. Rogan, Atty.
206 Davison Chemical Bldg.
Baltimore, 1, Md.

PAID-TELLER
COLLECTOR OF INTERNAL REVENUE
DISTRICT OF MARYLAND

Tax-8,152.98

Int- 485.93

(Period covered)

Amount, $8638.91

No. 4 11 1949 No. A

Received payment,

BALTIMORE OFFICE

NOT VALID UNLESS STAMPED BY CASHIER

Collector of Internal Revenue.

U. S. GOVERNMENT PRINTING OFFICE 16—27861-3

Defendant Klein Exhibit EY 649

Defendant Klein Exhibit EZ-1

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 Broadway
General Motors Building
New York 19, N. Y.

CIrcle 5-8070

March 4, 1952.

AIRMAIL
Mr. H. H. Klein
10521 Bellagio Road
Los Angeles, 24, Calif.

Dear H. H.

In accordance with our long distance telephone conversation of last Friday, wherein you authorized me to turn Koerner's check over to him, I am arranging to do so upon preparation of the necessary papers.

I am also, in accordance with our conversation, depositing my check which I have been holding upon your previous instructions.

As you suggested, I conferred with Ellis yesterday. He added nothing to my conversation with you, except to suggest that I obtain releases from Koerner and his corporations to me, which I will do.

As to your advice that I "get a good tax man", I think I have him in the person of the tax man I recommended to you early in 1944.

All best wishes on the arbitration with Renfield. You should, and I am sure you will be, successful in the matter.

With kindest regards to Gert and Pat, and looking forward to getting together with you on your next visit to New York,

Sincerely,

MORRIS

MOA:MF

Defendant Klein Exhibit EZ-2

McGUIGAN & KILCULLEN
ATTORNEYS & COUNSELORS AT LAW
233 Broadway
NEW YORK 7, N. Y.

RICHARD KILCULLEN
E. GAYLE McGUIGAN

Telephone Worth 4-4470

March 12, 1952

Mr. Morris O. Alprin
1775 Broadway
New York 19, N. Y.

Dear Sir:

Mr. H. H. Klein has forwarded to us your letter to him dated March 4, 1952, and has discussed it with us. We agree with him that the self-serving misstatements of fact contained in it should be denied on the record.

1 You state in that letter that on "last Friday" (i.e., February 29, 1952) Mr. Klein in a long distance telephone conversation with you "authorized" you "to turn Koerner's check over to him * * * ". In the first place this statement is untrue. Mr. Klein did not "authorize" or instruct you or tell you in any way to turn any check over to Mr. Koerner. In the second place your statement implies that you have been holding a check for Mr. Koerner subject to Mr. Klein's instructions or under instructions from Mr. Klein not to turn it over to Mr. Koerner without further authorization from Mr. Klein. What is so implied also is untrue. Mr. Klein has never instructed you, or asked you, to withhold any check from Mr. Koerner or to hold any check for Mr. Koerner subject to Mr. Klein's instructions or until Mr. Klein authorized you to turn it over to Mr. Koerner or to hold any check for delivery to Mr. Koerner, or to any person or corporation on behalf of Mr. Koerner, on Mr. Klein's authorization or instructions.

If you have been holding or are holding any check for Mr. Koerner or for any person or corporation on his behalf you have done so and are doing so for your own reasons

and not because of any instructions or request of Mr. Klein or because of any arrangement made by Mr. Klein with you or Mr. Koerner or with you and Mr. Koerner.

2. You further state in that letter that "in accordance with" your telephone conversation with Mr. Klein on February 29th you are "depositing my check which I have been holding upon your previous instructions." This statement and what it implies are both untrue. Mr. Klein has never given you any instructions with regard to your depositing, negotiating, cashing, collecting, or otherwise dealing with, any check, or with regard to your not doing any of those things; has never asked you to deposit, negotiate, cash, collect, or otherwise deal with any check, or not to do any of those things; has never made any agreement or reached any understanding with you with regard to your treatment of or dealings with any check you or anyone on your behalf may have received or held or possessed.

3. You further state in that letter that "Ellis" (presumably meaning Mr. Ellis Rosenberg) "added nothing to my conversation with you". In so far as this statement implies that Mr. Rosenberg repeated, or confirmed or acquiesced in the alleged instructions or authorizations discussed in the two preceding paragraphs, it is also untrue. Mr. Rosenberg categorically denies it and tells us that on the contrary he told you that whatever you did or did not do with regard to any check held, possessed, or owned, by you or by Mr. Koerner or by any person acting for you or either of you or by any corporation in which you or either of you are interested, was and always has been entirely up to you and that Mr. Klein had never given you any instructions or made any request of you or either of you with regard to your or Mr. Koerner's holding, depositing, cashing, negotiating or otherwise dealing with any check.

Very truly yours,

(sgd) E. GAYLE MCGUIGAN

Defendant Klein Exhibit EZ-3

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 Broadway
General Motors Building
New York 19, N. Y.

CIRCLE 5-8070

March 19, 1952.

McGuigan & Kilcullen, Esqs.
233 Broadway
New York, 7, N. Y.

Dear Mr. McGuigan:

Your exceptionally formal letter dated March 12, 1952 and postmarked March 18, 1952, 7:30 P. M., was received by me this morning.

Rather than engage in lengthy correspondence regarding the alleged "self serving misstatements of fact" and the self serving misstatements of fact contained in your letter of March 12th in an evident attempt to build up a "record", I am perfectly willing to let the facts and the record speak for themselves, together with other material which I have to substantiate the record.

In your very studied attempt to cover every possible contingency, haven't you really overlooked something?

Very truly yours,

MORRIS O. ALPRIN

MOA:MF

Defendant Haas Exhibit FA

DEDUCTIONS

4/14/47	MD. STATE INCOME TAXES PAID		$ 117.03
	CONTRIBUTIONS:		
	BALTO. HEBREW CONG.	3.00	
	"	50.50	
	COMMUNITY FUND	100.00	
	PARK SCHOOL	100.00	
	ANSHE EMUNAH CONG.	105.00	
	JEWISH WELFARE FUND	500.00	
	SHEARITH ISRAEL CONG.	26.00	884.50
	TAXES ON L.A. REAL ESTATE ~~(OTHER EXPENSES [illegible])~~		384.09 ~~[illegible]~~

EXEMPTIONS

2 @ 500.00 = $1000.00

MISC.

GIFTS MADE IN 1947

TO G.K	297500	cash
	2200000	"
Evelyn Morris Trustee for TO. E.V.T.F.P.K	297500	"
	800000	"

FED INCOME TAXES PAID

4 @ $800,000 = $1200,000.00

Defendant Haas Exhibit FA

Date Bought	C. of Ind.	Amount	Plus Premium	Plus Interest	Total Cost	Date Sold or Redeemed	Received Face	Plus Premium	Plus Interest	To Ai Ic
Jan. 30	1947	275000.00	48.42	1003.71	276052.13	3/1/47	275000.00	—	1203.13	27
Jan. 30	1947	300000.00	94.15	432.69	300526.84	6/1/47	300000.00*	—	1312.50	30
Jan. 30	1947	300000.00	108.65	1085.96	301194.61	7/10/47	300000.00	89.69	2251.03	30
Jan. 30	1947	300000.00	66.89	208.56	300275.45	7/17/47	300000.00	42.41	1423.97	30
	Totals	1,175000.00					1,175000.00			
			318.11					132.10		
				2730.92					6190.63	
					1,178049.03					1,18

* Rec'd new C. of Ind. for $210,000.00 and $90,000.00 Cash Plus Interest.

Date	Dividends Received	Gross Amount	Less 15% Canadian Tax	Less Loss In Exchange for Canadian Funds		Net Amount Received
Feb. 22	1947 United Dist. of Can. Ltd.	39277.50	5891.63	166.93		33218.94
Feb. 22	1947 " " "	2045.00	306.75	8.69		1729.56
1947	Distillers - Seagrams	5.31			1/2	5.31
1947	Jones & Laughlin Steel	30.00			1/2	30.00
1947	Crucible Steel Co.	25.00			1/2	25.00
1947	Ventures, Ltd.	.25				.25
		41383.06	6198.38	175.62		35009.06

Date Bought	Stock Transactions	Cost	No. of Shares			Amount Received	Date Sold
12/29/45	Wal.	100.00	15,000	Acquired By Exchange	2 Shares Dun Pan.	960,663.26	1/20/47
4/11/45	R.P.	100.00	4	" " Purchase		978,132.90	1/20/47
12/29/45	Sea.	700.00	15,000	" " Exchange	3 Shares A.K. Hav. Cost $150.00		
				" " "	5 " A.K. Pan. " 125.00		
				" " "	5 " D.R. Syn. " 125.00		
				" " "	3 " D.H. Hav. " 300.00	$2,771,590.69	1/20/47

Defendant Haas Exhibit

Date Bought	C. of Ind.	Plus Premium	Plus Interest	Total Amount Rec'd					
Jan. 30	1947	—	120313	276203.13		31811	6190.63		151
Jan. 30	1947	—	131250	301312.50		273092	13210		78566
Jan. 30	1947	8969	225103	302340.72		304903	632273		114611
Jan. 30.	1947	4241	142397	301466.38			304903		119093
	Totals	132.10	6190.63	1,181322.73		Interest	347370		347370

* Rec'd new C. of Ind. for $210,000.00 and $90,000.00 Cash Plus Interest.

Date	Dividends Received		
Feb. 22	1947 United Dist. of Can. Ltd.		
Feb. 22	1947 " " "		
1947	Distillers Seagrams		41431.63
1947	Jones + Laughlin Steel		41322.50
1947	Crucible Steel Co.		109.13
1947	Ventures, Ltd.	1244.13	
		619.34	
		42.35	

Date Bought	Stock Transactions	Amount Received	Date Sold
12/29/45	Wal	960.66326	1/20/47
4/11/45	R.P.	978.132.90	1/20/47
12/29/45	Sea		
		2771,590.69	1/20/47

	Other Stock Transactions	Date Bought	No of Shares	Cost	Plus Tax	Plus Charges (Commission	Total Cost	Date Sold	(Amount	Less Tax	Less Charges (Com.	Amount Rec'd
	Cambridge Distr Co.	6/7/46	450	11250.00			11250.00	12/30/47	19425.00	-	-	19425.00
	Mid-West Refineries	5/18/45	300	2100.00	59	48.00	2148.59	12/11/47	1,425.00	6.63	42.00	1376.37
			300									
	Kirby-Kirby, Ltd.	10/8/45	100	1000.00			1000.00	1/30/47	2852.15	-	-	2852.15
	Co-Joint Stock Transactions	1/2 To H.H.K. 1/2 To Geer K.		*Figures shown are total Receipts + Disbursements								
	Distillers-Seagrams	1/21/43	10	886.25	79	5.00	* 842.04	2/21/47	1050.00	(Can.) 7.50	29	1042.21 *
	Crucible Steel Co of A.	3/27/43	10	780.00	79	5.00	* 785.79	12/8/47	683.75	1.81	6.00	676.44 *

	Interest Earned		Amount
Year 1947	U.S Treasury Bonds		5000-
	Can. Pacific Rwy Co.		4000-
	Notes Receivable	See Record	
			90

	Sundry Income	Gross Amount	Less With Holding
1947	N. Nwavey Co. Ltd	2005.85	344.78

Bank Interest Earned		Less 15% Can. Tax	Net
Bowery	8.58		8.58
Bank of Montreal	97.85	14.67	83.18
Royal Can. Bank	186.96	28.08	158.89
	3463		

Defendant Alprin Exhibit FB

July 6th, 1945.

AIRMAIL

Mr. H. H. Klein
Hotel Vancouver
Vancouver, B. C. Canada.

Dear H. H.

Many thanks for your telegram advising you believe you will be able to arrange reservations from Winnipeg to Vancouver and that you will advise me sometime next week. I have picked up my tickets purchasing round trip tickets from New York to Vancouver by Trans-Canadian Airline and look forward to meeting you on the 20th at the Vancouver Hotel. I presume you will have reservation ready for us.

Al is taking the train to Chicago and depending upon Cohen to book him from there.

Am enclosing herewith a special page on market conditions which appeared in the Beverage Media for this month. I call your particular attention to the paragraph on Canadian Whiskies. From all appearances, it seems there will not be too much whiskey available this Fall even though allocations will be increased somewhat. It looks as though Gin will soon be in the class of Rums insofar as supplies and prices are concerned.

Best regards,

Sincerely,

MOA:MF
Enc. 1.

Defendant Haas Exhibit FD

MORRIS O. ALPRIN
COUNSELLOR AT LAW
1775 Broadway
General Motors Building
New York 19, N. Y.

CIrcle 5-8070

April 13, 1945.

Messrs. Haas, Schlesinger & Mayers
122 East 42nd Street
New York, N. Y.

Attention: Maurice Haas, Esq.

Re: Agencias Distiladores, S. A.
411 Aguiar Street, Havana, Cuba.

Dear Mr. Haas:

Governor Dewey yesterday signed a Bill authorizing the State Liquor Authority to adopt rules and regulations regulating the sale of alcoholic beverages in the State of New York in violation of the provisions of a Fair Trade Contract under the General Business Law (Feld-Crawford Law).

The Liquor Authority, under its rules to be promulgated, may prohibit the sale of any and all alcoholic beverages other than items offered for sale under a brand which is owned exclusively by one retailer and sold within the State by such retailer, except pursuant to a Fair Trade Contract entered into under General Business Law, Article 24-a (Feld-Crawford Law).

The rules of the Authority are calculated to foster and promote temperance and provide for the orderly distribution of alcoholic beverages.

Defendant Haas Exhibit FD

The new law provides that for the violation of any rule, the Authority may invoke a suspension not exceeding ten days for the first offense, a suspension not exceeding 30 days for the second offense, and for a third offense the Authority may suspend, revoke or cancel the license. The making of Fair Trade Contracts by brand owners is not mandatory. It is hoped that brand owners will make voluntary Fair Trade Contracts. In the event brand owners do not make such voluntary Fair Trade Contracts, or in the event the market becomes chaotic, or price wars develop, the Authority may, by its rules, compel the making of Fair Trade Contracts.

Since the Bill has just been signed, the Authority has not as yet made its rules and regulations but will be considering it within the next week or two. It is not as yet known whether or not all or many of the brand owners will enter into voluntary Fair Trade Contracts with retailers.

In order to anticipate the situation, I am writing you for your opinion in this matter. I believe the brand name HARWOOD is owned by DUNCAN HARWOOD & CO. LTD., Vancouver, B. C., Canada a Canadian corporation. The question is—whether or not this Canadian corporation or its sales agent, Agencias Distiladores, S. A. would be liable to any taxes in the State of New York or in the United States in the event a Fair Trade Contract is entered into by the brand owner.

As you know, the procedure is for the brand owner to prepare a Fair Trade Contract which it sends to retailers of the State and if a few of them sign it, it becomes binding upon all the retailers of the State and the only prices at which the brand can be sold are the prices set forth in the Fair Trade Agreement.

Defendant Haas Exhibit FD

May I have your written opinion in the matter so that I can be guided accordingly.

Sincerely,

MORRIS O. ALPRIN

MOA:MF

May 1, 1945

Mr. Morris O. Alprin
1775 Broadway
New York 19, N. Y.

In re: Agencias Distoladores, S. A.

Dear Mr. Alprin:

I have your letter of April 13th in which you ask for an opinion as to whether I think the Feld-Crawford Law, in connection with the Fair Trade Contracts, would have any tax effect either on Duncan Harwood & Co. Ltd. or Agencias Distiladores, S. A. My opinion is that it will have no such effect.

The principle which I stated in my letter of April 17, 1944, that the place of sale fixed the source of income st... holds good, and the making of a Fair Trade Contract under the laws of any particular state, merely regulating prices without affecting the place of sale, would in my opinion, not subject the foreign corporations to tax here.

Sincerely yours

Defendant Haas Exhibit FE

.....194

From the desk of:—

MORRIS O. ALPRIN

To

Dear Murray:

Address opinion and bill to Cuban company—

Send it by mail to (special delivery)

H. H. Klein
3610 Clarinth Road
Baltimore, Md.

Attached to your bill send letter listing some of your biggest and most important clients.

Regards,

MORRIS

Defendant Alprin Exhibit FH

DECLARATION OF ESTIMATED TAX

O. & Sadie F. Alprin — Social Security No., if any **1952**

E. 27 Street, Brooklyn, New York

(City, town, or post office) (Postal zone number) (State)

... show here ending date of your fiscal year 1953

8,541.16	ESTIMATED Income Tax for 1952	$ 8,558 84	(Cashier's Stamp)
	... during entire year 1952		
	... (item 1 less item 2)	$ 8,558 84	
	$ 458 84		
		458 84	
	... Tax (item 3 less the sum of items 4 and 5)	$ 8,100 00	
	... Instruction 4)	$ 2,025 00	

... that this declaration has been examined by me and to the best of my knowledge and belief is a true ...

Morris Alprin

(Signature of taxpayer or agent)

Sadie F. Alprin

..... 19 ..... (If this is a joint declaration (not made by agent), it must be signed by both husband and wife)

16—52534 2

Defendant Alprin Exhibit FH

HAAS, SCHLESINGER & MAYERS
CERTIFIED PUBLIC ACCOUNTANTS
122 EAST 42ND STREET, NEW YORK 17, N. Y.
MURRAY HILL 9-1780

INSTRUCTIONS FOR ATTACHED TAX RETURN

Taxpayer M. O. ALPRIN

Type of Return 1952 estimate

Due Date 3/15/52

Sign on Bottom of Page1 Mr & Mrs Alprin

Notary Required ~~xxxx~~ No

Total Tax $ 8,558.84

Amount due with this Return $ 2,025.

Make Check Payable to COLLECTOR OF INTERNAL REVENUE

Mail to COLLECTOR OF INTERNAL REVENUE
210 Livingston St., B'klyn, N.Y.

Installments permitted as follows:

1 -	3/15/52	$2,025
2 -	6/15/52	2,025
3 -	9/15/52	2,025
4 -	12/15/53	2,025

If tax is paid in installments, NOTE DUE DATES AND AMOUNTS IN YOUR DIARY. NO FURTHER NOTICE WILL BE SENT BY OUR OFFICE.

Kindly advise date of filing by completing the slip below and returning the same to us.

Name of Client M. O. ALPRIN

The 1952 estimate

was filed by us on

Amount of Check attached to return: $

Name of Client

Defendant Alprin Exhibit FI

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MAURICE A. HAAS, being duly sworn, deposes and says:

I am a Certified Public Accountant of the State of New York and have been for the past 33 years and an Attorney and Counsellor at Law for the past 27 years duly licensed to practice in the Courts of the State of New York.

That for the years 1947 to 1951 I prepared the Federal and New York State income tax returns of MORRIS O. ALPRIN. I was aware of the fact that in 1947 the said MORRIS O. ALPRIN had received a bank draft in the amount of $264,162.70 from H. H. KLEIN, having been informed thereof by the said MORRIS O. ALPRIN who further advised me that said draft was a liquidating dividend from TIVOLI TRADING CO. and that the said MORRIS O. ALPRIN had received instructions to hold said draft until further orders from H. H. KLEIN. I was further advised during 1947 that MORRIS O. ALPRIN had received instructions from H. H. KLEIN to deposit said draft in Canada and hold said deposit under the same restrictive orders. This situation prevailed when I prepared the said MORRIS O. ALPRIN's 1947 Federal Income Tax return. Before preparing the said 1947 Federal Income Tax return, MORRIS O. ALPRIN and I discussed the question of the year of taxability with reference to the specific problem whether the receipt in 1947 of the draft under the conditions as they existed resulted in a receipt of income immediately taxable. I advised said MORRIS O. ALPRIN that in my opinion the receipt of said draft under the conditions above described did not result in either actual or constructive receipt of income during 1947 and that con-

sequently the said MORRIS O. ALPRIN was not required to report the same on his 1947 return. I was informed thereafter when preparing said MORRIS O. ALPRIN's returns for 1948, 1949, 1950, and 1951 that the same condition surrounded the draft as theretofore and repeated my opinion as to the taxability of said bank draft. It was my opinion then, and still is my opinion, that said draft did not constitute taxable income to a cash basis taxpayer while its use was so restricted, and that it need not be reported as income until the restriction was removed.

MAURICE A. HAAS

. . . . . .

Sworn to before me this
15th day of September, 1953

BENJAMIN M. GANELES
Notary Public, State of New York
No. 60-6453700
Qualified in Westchester County
Certificates filed in the following offices:
County Clerk: New York
Register: New York
Commission Expires March 30, 1954

Defendant Alprin Exhibit FJ

NAME MAURICE HAAS-JULIUS SCHLESINGER-GEORGE M. GLASSGOLD-HERMAN SCHRIER

RESIDENCE 1 -2 East 42 St N.Y.C. Room 2715

RATE 6.00 SAFE No. 545

BUSINESS ADDRESS

DATE DEC 22 1950

FROM	TO	AMT	PAID	CASH BOOK	KEY DEPS'T
12/22/50	12/22/51	6 00	12/22/50		13807
12/22/51	12/22/52	6 00	1/4/52		N691

SEND MAIL TO

880-7-6

REMARKS

Access instruction on reverse side of card.

MAURICE HAAS + JULIUS SCHLESINGER
GEORGE M. GLASSGOLD + HERMAN SCHRIER

We .....

and ..... hereby surrender and terminate all my/our rights and interests in, and the renting of, SURRENDERED Deposit Box No. 545 in the vault of STERLING SAFE DEPOSIT COMPANY of NEW YORK and hereby release said Company from all claims.

Signed Maurice Haas

March 12 1950 DEC 22 1950

Date

Wit John Bernius

The undersigned hereby surrenders to Sterling Safe Deposit Co. of N. Y.; 2 key.

Maurice Haas SURRENDERED

served its purpose.

Defendant Alprin Exhibit F1

I Maurice Haas - Julius Schlesinger -
WE - George M. Glassgold & Herman Schrier hereby rent Safe No. 545 in vault of
STERLING SAFE DEPOSIT COMPANY OF NEW YORK 42nd St. **Office,**
for one year from date at $ 6.00 per year payable in advance, subject to said Company's rules and regulations which are hereby agreed to and made part hereof. Access to said safe shall be had only by ~~me~~ ~~us~~ ~~to~~ hereby acknowledge receipt of two keys, rent receipt, and a copy of said rules and regulations.

SURRENDERED

Date DEC 27 1950 19

Witness John Bernin

Signed George M Glassgold Maurice Haas Herman Schrier Julius Schlesinger

SIGNATURE	Date of Birth	Married or Sing'l	Birth Place	Mother's Name	Height	Weight	Eyes
Group (1) Maurice Haas	6/19/97	married	Ny	Clara	6'0"	200	green
Julius Schlesinger	7/20/97	"		Ernestine	5'9"	185	blue
Group (2) George M Glassgold	8/26/1900	"		Minnie	5'10½"	160	blue
Herman Schrier	1/2/190	"		Kate	5'7½"	165	brown

SURRENDERED

Access to be had by any person in Group # 2
when accompanied by any person in Group # 1

Defendant Alprin Exhibit FK

Gentlemen:

Supplementing the agreement between us made the day of April, 1944 and it being the desire of the parties that the merchandise be marketed through the proper channels and in the proper manner in order to establish the business on a sound basis, it is further agreed as follows:

1. Out of the profit of $1.60 per case as provided for in the agreement, the Agent agrees that it will pay a brokerage or selling commission of not in excess of 60¢ per case to brokers or selling agents selected by it but no such broker or selling agent will be selected by the Agent unless and until the written approval of the Supplier is first obtained as to each such broker or selling agent.

2. The Agent will make no sales to wholesalers in monopoly states without first having received written approval of the Supplier. The Supplier shall have the refusal of the customer or the quantity sold by the Agent to any wholesaler or monopoly state.

3. After the Agent has accepted and paid for its own account for sales to retailers for 12,500 cases or 12½% of the total of all shipments by the Supplier or its Principal, whichever is greater, then and in such event the Agent shall not be required to accept any further shipments or to maintain the letter of credit as provided in the agreement between the parties. On all sales in excess of the above 12,500

Defendant Alprin Exhibit FK

cases or 12½%, whichever is greater. Agent shall not be compelled to pay for same unless and until the Agent shall have received from its customer a sight letter of credit irrevocable for 90 days in favor of the Agent. The Supplier or its Principal is to make shipment of any goods so sold to Agent's wholesale customers on open credit to Agent by forwarding the documents provided for in the agreement and with three (3) day sight draft to the bank and payment thereof is to be made by the Agent to the bank in accordance with such sight draft.

Very truly yours,

Defendant Alprin Exhibit FL

M 29 31 — Morris O. Alprin — M 24 209 P

Morris Alprin

Vancouver Hotel Vancouver BC —

MONCKER ADVISES REGULATION EXEMPTING IMPORTS INCLUDING GINS FROM PRICE CONTROL NOT YET PASSED STOP ACTION ON REGULATION IMMINENT AND EXPECTED BY END OF WEEK STOP WILL FOLLOW UP IF YOU ADVISE **

Samuel Friedman.

Defendant Alprin Exhibit FM

ESTABLISHED 1811

CABLE ADDRESS
RECRECER

TELEPHONE
CHICKERING 4-1100

R. C. WILLIAMS & CO., INC.
Wine & Spirit Importers
Domestic Wine & Liquor Merchants

10TH AVENUE 25TH TO 26TH STS.
NEW YORK

N. Y. State Wholesale License L. I. No. 1

August 13th, 1945.

Mr. Morris O. Alprin,
1775 Broadway,
New York, N. Y.

Dear Morris:—

I have just received a note from Mr. McMahon advising me that we have not shipped HARWOOD into any South American countries. We have only sold HARWOOD to vessel supplies. I believe you are looking for this information.

Sincerely yours,

R. C. WILLIAMS & CO. INC.

I. A. KOERNER
I. A. Koerner.
Manager—Liquor Department.

IAK:SR

Name: "El Aguila Exportadora, S. A." ("Eagle Exporters, Inc.)

Deed No. 861 of June 29, 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Miro y Calonge.

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $100,000.00

Directors: Dr. Alberto Valverde Abril and
Dr. Gustave Suarez (M) (S) (G)

Officers: President-Alberto Valverde Abril (M.A.)
Treasurer - Gustave Suarez Ortega (S.A.)
Secretary - Alberto Valverde Abril

Cuban Bank Account: The Royal Bank of Canada, Havana, Cuba.

* *

Name: "La Importadora Marte, S. A."
(Marte Import Corporation).

Deed No. 858 of June 29, 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Miro y Calonge.

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $ 100,000.00

Directors: Dr. Alberto Valverde Abril and
Dr. Gustave Suarez (M. S. G.)

Officers: President Alberto Valverde Abril (S.A.)
Treasurer Gustave Suarez (M.A.)
Secretary Alberto Valverde Abril

Cuban Bank Account: The Bank of Nova Scotia.

DEFENDANT'S H
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
AUG 9 1955

F 1 1 1

Name: "La Economica Agencias, S. A."
(Economic Agencies, Inc.)

Deed No. 864, of June 29, 1946, before the Notary Public, of Havana, Dr. Isaac C. Mire y Calonge

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $ 75,000.00.

Directors: Gustave Suarez Ortega and
Dr. Alberto Valverde Abril (M.) (S.) (S.)

Officers: President - Dr. Gustave Suarez Ortega (G.A.)
Treasurer - Dr. Alberto Valverde Abril (M.A.)
Secretary - Dr. Alberto Valverde Abril

Cuban Bank Account: The Trust Company of Cuba (Oficios)

Name: "Compania Comercial Apolo, S. A."
("Apolo Trading Company")

Deed No. 865 of June 29, 1946, before the Notary Public of Havana, Dr. Isaac C. Mire y Calonge

Domicile: Mercaderes No. 26, Havana, Cuba

Authorized Capital: $50,000.00

Directors: Dr. Gustave Suarez Ortega and
Dr. Alberto Valverde Abril (W.A.) (S.) (M.)

Officers: President Dr. Gustave Suarez Ortega (W.A.)
Treasurer Dr. Alberto Valverde Abril (M.A.)
Secretary Dr. Alberto Valverde Abril

Cuban Bank Account: Banco Nunez.

Rec

Name: "Compania Importadora Permandina, S. A."
(Permandina Import Corporation)

Deed: Deed No. [illegible] of June [illegible], 1946, before the Notary Public, Dr. Isaac C. Miro y Calonge

Domicile: Mercaderes No. [illegible], Havana, Cuba.

Authorized Capital: $ 100,000.00

Directors: Dr. Alberto Valverde Abril and (K.R.)
Dr. Gustavo Suarez (A.R.)

Officers: President - Alberto Valverde Abril (A. R.)
Treasurer - Gustavo Suarez Ortega (K. R.)
Secretary - Alberto Valverde Abril

Cuban Bank Account: The Bank of Nova Scotia.

Name: "Importadora Reina, S. A."
("Reina Import Corporation").

Deed No. [illegible] of June [illegible], 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Miro y Calonge.

Domicile: Mercaderes No. [illegible], Havana, Cuba.

Authorized Capital: $100,000.00

Directors: Dr. Alberto Valverde Abril and
Dr. Gustavo Suarez (A.R.) (K.R.)

Officers: President Alberto Valverde Abril (K. R.)
Treasurer Gustavo Suarez Ortega (A. R.)
Secretary Alberto Valverde Abril

Cuban Bank Account: The Royal Bank of Canada (Havana Branch

DEFENDANTS A

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
AUG 9 1955

FN-2-[illegible]

Name: "La Moderna Agencias, S. A."
(Modern Agencies, Inc.)

Deed No. 862 of June 29, 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Miro y Calonge

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $ 75,000.00.

Directors: Dr. Gustavo Suarez Ortega and
Alberto Valverde Abril (A.) (E.) (H.)

Officers: President - Dr. Gustavo Suarez Ortega (H. R.)
Treasurer - Dr. Alberto Valverde Abril (A. R.)
Secretary - Dr. Alberto Valverde Abril

Cuban Bank Account: The Trust Company of Cuba (Oficios)

Name: "Compania Comercial La Ribera, S. A."
(La Ribera Trading Company)

Deed No. 867 of June 29, 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Miro y Calonge

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $ 50,000.00

Directors: Dr. Gustavo Suarez Ortega and
Dr. Alberto Valverde Abril (A.) (E.) (H.)

Officers: President Dr. Gustavo Suarez Ortega (H. R.)
Treasurer - Dr. Alberto Valverde Abril (A. R.)
Secretary - Dr. Alberto Valverde Abril.

[illegible] "La Universal Importadora, S. A."
("Universal Importers, Inc.")

[illegible] No. 887 of June 29, 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Mire y Calonge

[illegible] Mercaderes No. 26, Havana, Cuba

[illegible] Capital: $200,000.00

[illegible] Dr. Alberto Valverde Abril and
Dr. Gustave Suares (I. K.) (M. K.)

[illegible]: President - Alberto Valverde Abril (I. K.)
Treasurer - Gustave Suarez Ortega (M. K.)
Secretary - Alberto Valverde Abril.

Cuban Bank Account: The Royal Bank of Canada
(Havana Branch)

Name: "La Universal Importadora, S. A."
("Universal Importers, Inc.")

Deed N o. 887 of June 29, 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Mire y Calonge

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $200,000.00

Directors: Dr. Alberto Valverde Abril and
Dr. Gustave Suarez (I.K.) (M. K.)

Officers: President Alberto Valverde (M. K.)
Treasurer Gustave Suares (I. K.)
Secretary Alberto Valverde

Cuban Bank Account: The Bank of Nova Scotia.

DEFENDANTS A

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
AUG 9 1955

FN-3-W

[illegible]

Name: "La [illegible] Agencia[illegible]
(World Agencies, [illegible])

Deed No.863 of June 29, 1946, before the Notary Public of Havana, Cuba, Dr. Isaac C. Miro y Calonge

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $ 75,000.00

Directors: Dr. Gustavo Suarez Ortega and
Dr. Alberto Valverde Abril (I.K. (M. K.)

Officers: President - Dr. Gustavo Suarez Ortega (I. K.)
Treasurer - Dr. Alberto Valverde Abril (M. K.)
Secretary:- Dr. Alberto Valverde Abril

Cuban Bank Account: The Trust Company of Cuba (Oficios).

Name: "Compania Comercial Misiones, S. A."
(Misions TradingCompany)

Deed No. 866 of June 29, 1946, before the Notary Public of Havana, Dr. Isaac C. Miro y Calonge

Domicile: Mercaderes No. 26, Havana, Cuba.

Authorized Capital: $ 50,000.00

Directors: Dr. Gustavo Suarez Ortega and
Dr. Alberto Valverde Abril (I.K.) (M. K.)

Officers: President - Gustavo Suarez Ortega (M. K.)
Treasurer - Alberto Valverde Abril (I. K.)
Secretary - Alberto Valverde Abril

Cuban Bank Account: Banco Nunez.

Defendant Alprin Exhibit FO

BUFETE
VALVERDE-SUAREZ
LAW OFFICE

LETRADOS
Dr. Alberto Valverde Abril
Dr. Gustavo Suarez Ortega
Dr. Nestor Moreno Lopez
Dr. Mario Obregon Bardina
NOTARIO
Dr. Jose M. Ruiz Jimenez

EDIFICIO "MORALES CALVO"
Departamento 407
Mercaderes No. 26
Telefono M-1428
P. O. Box 1947
HABANA

July 18, 1946.

Mr. Morris O. Alprin.
Counsellor at Law.
1775 Broadway.
General Motors Building.
-.NEW YORK 19, N.Y.-

REF.: "El Aguila", Exportadora S.A.
"La Importadora Marte" S.A.
"La Economica", Agencias S.A.
"Cia. Comercial Apolo" S.A.

Dear Mr. Alprin:

I want to acknowledge receipt of your letter of July 12th., in relation with the issuance of additional stock in the above entitled corporations.

In reply to your inquiries, I want to state the following:

1.- The issuance of stock must be resolved by the Stockholders Meeting duly convoked for the purpose. Therefore, I need a proxy from the actual stockholders of the companies. The proxies do not have to be legalized by the Cuban Consul, but it is convenient to have same executed in the presence of a witness, although it is noy absolutely necessary.

Defendant Alprin Exhibit FO

2-a).-The resolution adopted by the Stockholders Meeting, in accordance with our Law, must be filed with a Notary Public and register in the Mercantile Registry and in the Registry of Corporations.

2-b).-The name and address of the new stockholders must not be listed in a Public Registry but in the Registry of the Stock-Book of the corporations.

3.- The procedure has been outlined hereinbefore. A resolution must be adopted by the stockholders and protocolized with a Notary Public. Copy of the protocolization must be sent to the Revenue Department in Havana for the purpose of paying the duties (0.90% of the new issuance). The protocolization must, thereinafter, be recorded in the Mercantile Registry and in the Registry of Corporations.

The expenses of the protocolization and registrations are nominal and will be conveyed to you in due time.

My very best regards to you and to your family in which Dr. Suarez joins me most heartily.

Sincerely yours,

AVA/fp. DR. ALBERTO VALVERDE ABRIL

Defendant Alprin Exhibit FP-1

August 20th, 1946.

Dr. Alberto Valverde Abril
Mercaderes No. 26
Havana, Cuba.

AIRMAIL

Dear Dr. Valverde:

I am enclosing herewith signed statements of bank accounts of the ROYAL BANK OF CANADA and BANK OF NOVA SCOTIA.

Suggest you forward all mail pertaining to Mr. Roer directly to him and likewise with respect to Mr. Irving Koerner.

I am still awaiting translation of all the documents which I was supposed to have sometime ago.

Best regards to you and Dr. Suarez.

Sincerely,

MOA:MF
Enc.

Defendant Alprin Exhibit FP-2

October 7, 1946

Valverde & Suarez
Departamento 307
Mercaderes No. 26
Havana, Cuba

Dear Dr. Valverde:

I have your letter of October 4th with reference to office rent and services rendered to the various corporations.

Since each of these corporations are separate and distinct, I would suggest that you render a separate bill to each corporation in the sum of $25.00 each for the quarterly period. Send the bills with reference to the corporations of my family to me and likewise send the bills of the Roer family corporations to Mr. Roer, and do likewise with the corporations of the Koerner family by sending same to Mr. Koerner.

As yet there has been no action with respect to opening American bank accounts or the purchase of additional stock inasmuch as some of the plans for engaging in certain businesses have not as yet materialized and therefore additional capital is not yet necessary. If and when the situation changes, I will advise you.

With best regards to you and Dr. Suarez, I am

Sincerely,

MOP:ah

Via airmail

Defendant Alprin Exhibit FQ-1

ALBERTO VALVERDE ABRIL
Abogado
CUBA 355 EDIFICIO ARIOSA
Telefono A 8027
HABANA

Havana, September 27th., 1949.

Mr. Morris O. Alprin.–
Counsellor at Law.–
1775 Broadway.
–.NEW YORK 19, N. Y.–

Dear Morris:

I have received your letter of September 13th., from which I had separate the check of $21.36, to cover the notarial expenses and stamps for the legalization of the resolutions suspending the Companies for which I thank you very much.–

With respect to wait a while for the check of $273.32, I understand all the reasons that you give me in your letter, and perssonally, I don't have any hurry to obtain it. But, for your information, and this is strictly confidential, since you and your associates constitute the Corporations I have to give a big part from my fees to Dr. Ricardo Morán, because he send you to me; and from the amount of $3,000.00 that you all paid for the acts of incorporation, I only received a very small amount. I don't like that Dr. Morán could know that I have told you all these things, but I have to informed you of same. I am handling all the Companies alone, but I have to keep Dr. Morán informed of what is happenning in this business. I expect you will understand my reason, also.

Regarding the air conditioned business, I have informed my partners in our Company everything that you told me

Defendant Alprin Exhibit FQ-1

on your letter of September 9th., but I was, and still are, very busy, and as soon as I can clear up my desk, I will take care of this matter. With respect to make a trip there, I am not hurry to do it; may be the next December I could make it, but I have to be sure that the trip will bring good business.

My father told me about the conversation with you, and he doesn't saw you when he gets back from Saratoga, because he knows that you are very busy and he doesn't want to disturb you. He gives you his regards. He also told me, that you have plans to reunite some investors of New York, and constitute a big Company to make the mortgage business; I think it is a great idea; as soon as you can fix your work, please drop me a line about this matter. I think it is a very good business now in Cuba.

I am quite sure that some day you will get a good business for us; I am not in a hurry; but I have to informed you about the business as it appears;

Best regards to all the family in which Lala joins,

Sincerely;

Alberto.

Defendant Alpı in Exhibit FQ-2

September 30, 1949.

Mr. Alberto Valverde Abril
Cuba 355, Edificio Ariosa
Havana, Cuba.

AIRMAIL

Dear Albert:

Was very happy to have your letter of September 27th. I note your comments regarding Dr. Moran. Naturally, I will keep this confidential and bear it in mind.

Note your remarks regarding the air conditioning business and trust to obtain your information whenever you are ready, after which I will get busy and see what can be done at this end.

I regret very much I did not have the pleasure of a further conference with your father after he returned from Saratoga. It was our hope and desire to entertain him and your mother when they returned to New York. I found him very interesting and a good business man. I can now see you had wonderful training under him.

I have been doing some work along the lines of trying to get together people with money to make investments in Cuba, either in the loaning of money on mortgages, building loans, or actual building. Naturally, this takes some time. It is especially difficult to overcome lethargy of people, also their apprehension of world conditions, as well as the fact that Cuba is some distance away and unless one of the group will make his headquarters in Havana with

you, it would seem difficult to accomplish my purpose. However, I am not giving up but will continue along these lines.

Someday, somehow, I am sure we will get together on something to our mutual advantage and I am looking forward very anxiously and confidently to that time.

With all best regards to you and Lakin in which the family joins me, I remain

Sincerely,

MOA:MF

Defendant Alprin Exhibit FR

DR. ALBERTO VALVERDE ABRIL
ABOGADO
ATTORNEY-AT-LAW
Mercaderes 26 - Edificio Morales Calvo
Departamento No. 307
P. O. Box 1947
HABANA

March 17, 1947.-

Mr. Morris O. Alprin.
Counsellor at Law.-
1775 Broadway.-
-.NEW YORK 19, N. Y.-

Dear Mr. Alprin:

I want to inform you that in March 7th, I had a conversation with Mr. Rosemberg, who wants three Resolutions; one for each Company constituted only by Mr. and Mrs. Roer; Mr. & Mrs. Koerner; and, Mr. & Mrs. Alprin, certifying the powers of the Directors of those Companies in relation with open and maintain-current accounts in banks and to sign the checks. I told him that I couldn't make any certification or Resolution, without receive instructions from the Board of Directors of each Company to do it, and he informed me that you will write immediately, giving me such orders.-

As more than a week is passed without receive news from you on this matter, I considered that my duty is communicate you everything for your information, and if you think it will be necessary to do same with your associates, please let me know.

With my very best regards to your family, in which Mrs. Valverde joins me heartly, I beg to remain.

Yours very sincerely,

DR. A. VALVERDE ABRIL
DR. ALBERTO VALVERDE ABRIL

AVA/fp.-

Defendant Alprin Exhibit FS

Irving Koerner
Suite – 605
99 Hudson Street
New York City

[STAMP]

373598
REGISTERED
RET. REC. REQ.

Morris O. Alprin, Esq.,
1775 Broadway
New York City

Suite – 605
99 Hudson Street
New York City

February 27th, 1952

Morris O. Alprin, Esq.,
1775 Broadway
New York City

Dear Sir:

You are in possession of Banker's check #186200 issued by the Royal Bank of Canada on March 27th, 1947, at Montreal, in the sum of $264,162.70 and made payable to Economica Agencias, S.A.
This check is my property and I hereby make demand upon you that you turn over this check to me with the proper endorsement or that the funds thereof be turned over to me or my designee.

Very truly yours,

Irving Koerner
IRVING KOERNER

Reg. RRR

Defendant Alprin Exhibit FT

NEW YORK TELEPHONE COMPANY

Addresses: See back of Stub
Telephone: Dial 811 or Call "Business Office"

Check # 4164 3/10/52

MAR. 6, 1952

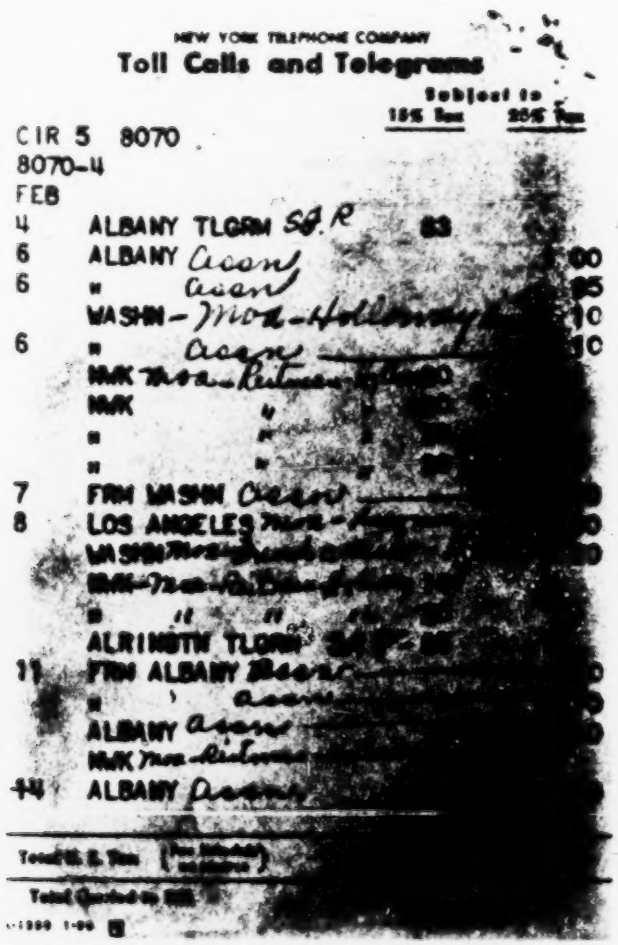
CTR 5

8070

LIQUOR DEALERS ASSN
1775 BWAY 19

LOCAL SERVICE for One Month in Advance	75	Message Units Included	50 04 ✓
ADDITIONAL MESSAGE UNITS to Date of Bill	1437	See back of Bill	77 39 ✓
TOLL CALLS AND TELEGRAMS. List enclosed			52 23 ✓
OTHER CHARGES OR CREDITS. Explanation enclosed			(75)
BALANCE FROM LAST BILL. Please disregard this amount if paid			
		TOTAL	180 43*
		Less	75
			179.65

★ Includes 15% U. S. tax and 3% N. Y. City tax.
See back of bill to determine amount of tax.



NEW YORK TELEPHONE COMPANY

Toll Calls and Telegrams

		Subject to 15% Tax	25% Tax
CIR 5 8070			
8070-4			
FEB			
4	ALBANY TLGRM SJ.R	83	
6	ALBANY Assn		00
6	" Assn		85
	WASHN - Mon-Holloway		10
6	" Assn		10
	NWK Mon-Reitman		
	NWK "		
	" "		
	" "		
7	FRM WASHN Assn		
8	LOS ANGELES Mon-		
	WASHN Mon-		
	NWK-Mon-		
	" " "		
	ALRINGTN TLGRM		
11	FRM ALBANY Assn		
	" Assn		
	ALBANY Assn		
	NWK Mon-Reitman		
14	ALBANY Assn		

Total U. S. Tax (Tax Schedule on reverse)

Total Carried to Bill

A-1390 1-00

CIR 5 8070

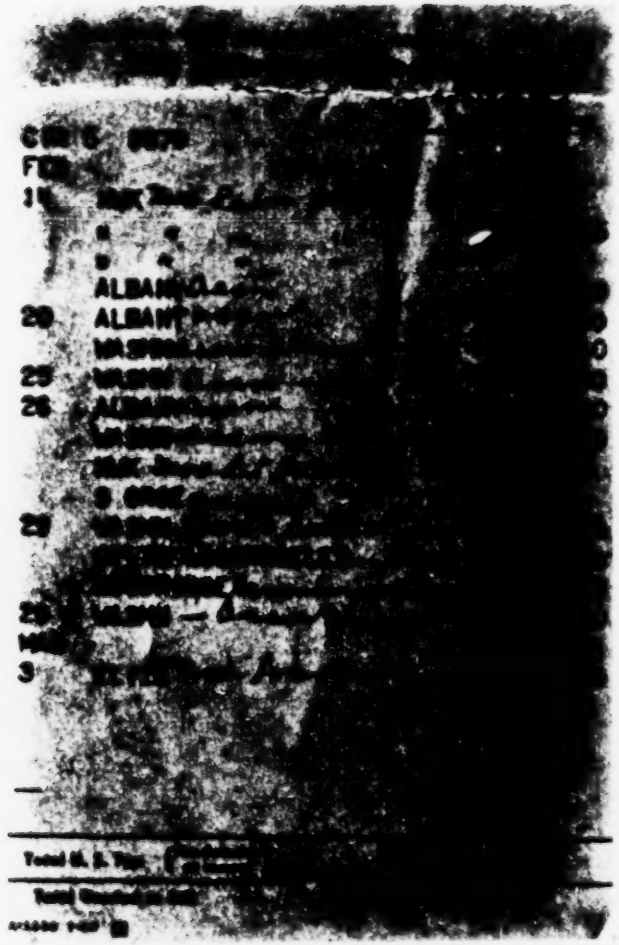
FEB

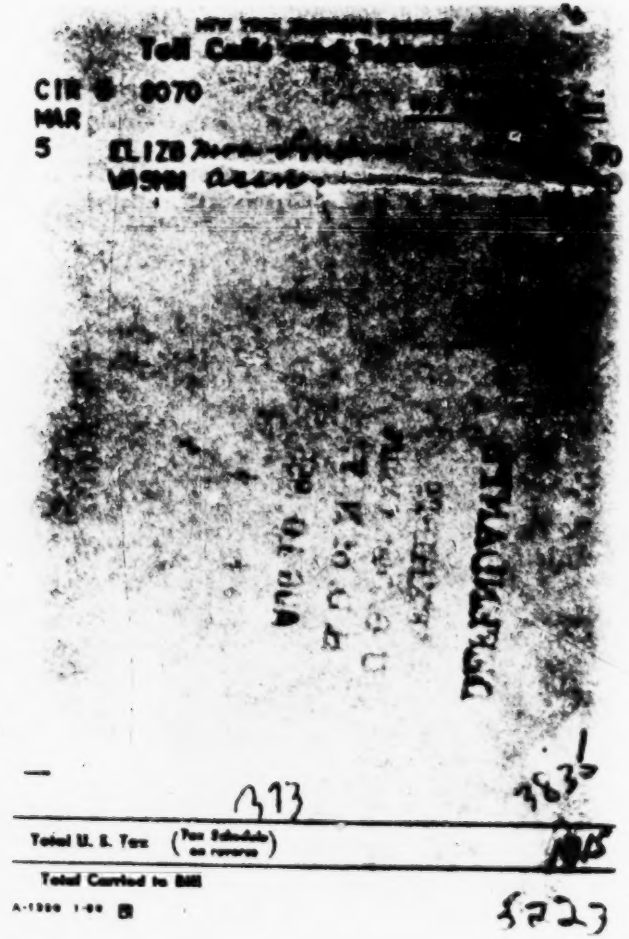
14	NWK Mon-	
	" "	
	" "	
	ALBANY Assn	
20	ALBANY	
	WASHN	
25	WASHN	
26	ALBANY	
	WASHN	
	NWK Mon-	
	S. ORGE	
29	WASHN	
29	WASHN - Assn	
MAR		
3		

Total U. S. Tax

Total Carried to Bill

A-1390 1-00





NEW YORK TELEPHONE COMPANY

Toll Calls and Telegrams

CIR 5 8070

MAR

5	ELIZB Mon-	
	WASHN Assn	

373

3835

Total U. S. Tax (Tax Schedule on reverse)

Total Carried to Bill

A-1390 1-00

5223

Defendant Alprin Exhibit FU

March 6, 1952.

George M. Glassgold, Esq.
7 East 44th Street
New York, N. Y.

Dear Mr. Glassgold:

With reference to our conversation yesterday regarding the registered letter of demand of your client, Mr. Irving Koerner, I have been authorized by Mr. H. H. Klein to deliver the check in question to your client. This authorization confirms Mr. Koerner's statement to that effect after his conference with Mr. Klein.

Accordingly, I am prepared to endorse the check to the order of Irving Koerner with appropriate corporate resolution against receipt therefor and delivery of releases to me.

Will you, therefore, arrange with the other escrowees, Mr. Haas or Mr. Schlesinger to obtain the check for such endorsement, notifying me when it is available for endorsement.

Enclosed please find Releases to be signed and properly executed.

Sincerely,

MOA:MF
Encs.

Defendant Alprin Exhibit FV

Received from MORRIS O. ALPRIN, Banker's Check No. 186200 issued by the Royal Bank of Canada on March 27, 1947, in the sum of $264,162.70, made payable to ECONOMICA AGENCIAS, S. A. and endorsed by ECONOMICA AGENCIAS, S. A. payable to the order of IRVING KOERNER, together with Secretary's Certificate of Resolution of ECONOMICA AGENCIAS, S. A. authorizing such endorsement, which satisfies my demand on MORRIS O. ALPRIN by registered letter dated February 27, 1952.
Dated: March 8 1952.

IRVING KOERNER
Irving Koerner.

MARY H. BRIGGS
Notary Public, State of Florida at large
My commission expires Jan. 8, 1956
Bonded by American Surety Co. of N. Y.

Rec'd above check for Irving Koerner.
March 11/52

GEO. M. GLASSGOLD
As Attorney.

Defendant Alprin Exhibit FW-1

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

GREETING: KNOW YE, That IRVING A. KOERNER, residing at No. 24 Old Pond Road, Great Neck, Long Island, New York, for and in consideration of the sum of One ($1) Dollar, and for other good and valuable considerations, lawful money of the United States of America to him in hand paid by MORRIS O. ALPRIN and ECONOMICA AGENCIAS, S. A. the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents does for himself, his heirs, executors, and administrators and assigns, remise, release and forever discharge the said MORRIS O. ALPRIN and ECONOMICA AGENCIAS, S. A., their heirs, executors, administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said MORRIS O. ALPRIN and ECONOMICA AGENCIAS, S. A. he ever had, now has or which he, his heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, specifically all matters and claims in connection with Banker's Check No. 186200 issued by the Royal Bank of Canada on March 27, 1947 in the sum of $264,162.70 and made payable to ECONOMICA AGENCIAS, S. A., said check and the amount thereof being the property of IRVING A. KOERNER.

This release may not be changed orally.

Defendant Alprin Exhibit FW-1

IN WITNESS WHEREOF, I have hereunto set my hand and seal the Eighth day of March in the year one thousand nine hundred and Fifty-Two.
Sealed and delivered in the presence of

IRVING A. KOERNER L.S.
Irving A. Koerner

STATE OF FLORIDA
COUNTY OF BROWARD } ss.:

On the 8th day of March in the year one thousand nine hundred and Fifty-Two before me personally came IRVING A. KOERNER to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

MARY H. BRIGGS
Notary Public, State of Florida at large
My commission expires Jan. 8, 1956
Bonded by American Surety Co. of N. Y.

IRVING A. KOERNER
TO
MORRIS O. ALPRIN
and
ECONOMICA AGENCIAS, S. A.
GENERAL RELEASE

Defendant Alprin Exhibit FW-2

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

GREETING: KNOW YE, That COMPANIA COMERCIAL MISIONES, S. A. a corporation organized and existing under and by virtue of the laws of the Republic of Cuba for and in consideration of the sum of One dollars ($1.00) lawful money of the United States of America and other good and valuable considerations to it in hand paid by MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A. the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A., their heirs, executors and administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A. it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, specifically all matters and claims in connection with Banker's Check No. 186200 issued by the Royal Bank of Canada on March 27, 1947 in the sum of $264.162.70 and made payable to ECONOMICA AGENCIAS, S.A., said check and the amount thereof being the property of IRVING A. KOERNER.

This release may not be changed orally.

Defendant Alprin Exhibit FW-2

IN WITNESS WHEREOF, the said COMPANIA COMERCIAL MISIONES, S. A. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the Eighth day of March nineteen hundred and Fifty-Two.

MARIE A. KOERNER, *Pres.*

(CORPORATE SEAL)

STATE OF FLORIDA }
COUNTY OF BROWARD } ss.:

On the 8th day of March nineteen hundred and Fifty-Two before me came MARIE A. KOERNER to me known, who, being by me duly sworn, did depose and say that he resides at 24 Old Pond Road, Great Neck, N. Y. that she is the President of COMPANIA COMERCIAL MISIONES, S. A. the corporation described in, and which executed, the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation; and that she signed ~~hi~~er name thereto by like order.

MARY H. BRIGGS
Notary Public, State of Florida at large
My commission expires Jan. 8, 1956.
Bonded by American Surety Co. of N. Y.

COMPANIA COMERCIAL
MISIONES, S. A.
TO
MORRIS O. ALPRIN
and
ECONOMICA AGENCIAS S. A.
GENERAL RELEASE
By Corporation

Defendant Alprin Exhibit FW-3

TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

GREETING: KNOW YE, That LA UNIVERSAL IMPORTADORA, S.A. a corporation organized and existing under and by virtue of the laws of the Republic of Cuba for and in consideration of the sum of One dollars ($1.00) lawful money of the United States of America and other good and valuable consideration to it in hand paid by MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A. the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A., their heirs, executors and administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A. it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, specifically all matters and claims in connection with Banker's Check No. 186200 issued by the Royal Bank of Canada on March 27, 1947 in the sum of $264,162.70 and made payable to ECONOMICA AGENCIAS S. A., said check and the amount thereof being the property of IRVING A. KOERNER.

This release may not be changed orally.

Defendant Alprin Exhibit FW-3

IN WITNESS WHEREOF, the said LA UNIVERSAL IMPORTADORA, S. A. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the Eighth day of March nineteen hundred and Fifty-Two.

[CORPORATE SEAL]

MARIE A. KOERNER
Pres.

STATE OF FLORIDA }
COUNTY OF BROWARD } ss.:

On the 8th day of March nineteen hundred and Fifty-Two before me came Marie A. Koerner to me known, who, being by me duly sworn, did depose and say that he resides at 24 Old Pond Road, Great Neck, N. Y., that she is the President of LA UNIVERSAL IMPORTADORA, S. A. the corporation described in, and which executed, the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation; and that she signed her name thereto by like order.

MARY H. BRIGGS
Notary Public, State of Florida at large
My commission expires Jan. 8, 1956
Bonded by American Surety Co. of N. Y.

LA UNIVERSAL IMPORTADORA,
S. A.
TO
MORRIS O. ALPRIN
and
ECONOMICA AGENCIAS S. A.
GENERAL RELEASE
By Corporation

Defendant Alprin Exhibit FW-4

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

GREETING: KNOW YE, That COMPANIA EXPORTADORA COLUMBIA, S. A. a corporation organized and existing under and by virtue of the laws of the Republic of Cuba for and in consideration of the sum of One dollars ($1.00) lawful money of the United States of America and other good and valuable considerations to it in hand paid by MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A. the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A., their heirs, executors and administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bond, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A. it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, specifically all matters and claims in connection with Banker's Check No. 180200 issued by the Royal Bank of Canada on March 27, 1947, in the sum of $264,162.70 and made payable to ECONOMICA AGENCIAS S. A., said check and the amount thereof being the property of IRVING A. KOERNER.

This release may not be changed orally.

Defendant Alprin Exhibit FW-4

IN WITNESS WHEREOF, the said COMPANIA EXPORTADORA COLUMBIA, S. A. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the Eighth day of March, nineteen hundred and Fifty-two.

IRVING A. KOERNER
Pres.

(Corporate Seal)

STATE OF FLORIDA }
COUNTY OF BROWARD } ss.:

On the 8th day of March nineteen hundred and Fifty-Two before me came Irving A. Koerner to me known, who, being by me duly sworn, did depose and say that he resides at 24 Old Pond Road, Great Neck, N. Y. that he is the President of COMPANIA EXPORTADORA COLUMBIA, S. A. the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation; and that he signed his name thereto by like order.

MARY H. BRIGGS
Notary Public, State of Florida at large
My commission expires Jan. 8, 1956.
Bonded by American Surety Co. of N. Y.

COMPANIA EXPORTADORA
COLUMBIA, S. A.
TO
MORRIS O. ALPRIN
and
ECONOMICA AGENCIAS S. A.
GENERAL RELEASE
By Corporation

Defendant Alprin Exhibit FW-5

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

GREETING. Know Ye, That LA MUNDIAL AGENCIAS, S. A. a corporation organized and existing under and by virtue of the laws of the Republic of Cuba for and in consideration of the sum of One dollars ($1.00) lawful money of the United States of America and other good and valuable considerations to it in hand paid by MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A. the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A., their heirs, executors and administrators, successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said MORRIS O. ALPRIN and ECONOMICA AGENCIAS S. A., it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, specifically all matters and claims in connection with Banker's Check No. 186200 issued by the Royal Bank of Canada on March 27, 1947 in the sum of $264,162.70 and made payable to ECONOMICA AGENCIAS S. A., said check and the amount thereof being the property of IRVING A. KOERNER.

This release may not be changed orally.

Defendant Alprin Exhibit FW-5

IN WITNESS WHEREOF, the said LA MUNDIAL AGENCIAS, S. A. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the eighth day of March, nineteen hundred and Fifty-Two.

IRVING A. KOERNER
Pres.

[CORPORATE SEAL]

STATE OF FLORIDA }
COUNTY OF BROWARD } ss.:

On the 8th day of March, nineteen hundred and fifty-two, before me came Irving A. Koerner to me known, who, being by me duly sworn, did depose and say that he resides at 24 Old Pond Road, Great Neck, N. Y.; that he is the President of LA MUNDIAL AGENCIAS, S. A., the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

MARY H. BRIGGS
Notary Public, State of Florida at large
My commission expires Jan. 8, 1956.
Bonded by American Surety Co. of N. Y.

LA UNIVERSAL IMPORTADORA,
S. A.
TO
MORRIS O. ALPRIN
and
ECONOMICA AGENCIAS S. A.
GENERAL RELEASE
By Corporation

Form 1040-ES
Treasury Department
Internal Revenue Service

DECLARATION OF ESTIMATED TAX

NAME [redacted] Social Security No., if any [redacted]
(Please print. If this declaration is for a husband and wife, use first names of both)

ADDRESS [redacted] Brooklyn, New York
(Please print) (Street and number or rural route) (City, town, or post office) (Postal zone number) (State)

1952

If this declaration is not for calendar year 1952, show here ending date of your fiscal year ....., 1953

1. Your 1951 Income Tax $ 9,542.16 ; ESTIMATED Income Tax for 1952		$ 77,458	84
2. Estimated Income Tax withheld [redacted]			
3. ESTIMATED Tax after deduction [redacted] (item 1 less item 2)		$ 77,458	84
4. Less: Credit for 1951 overpayment [redacted] item 8, page 1, Form 1040, for 19[redacted]	$ 458 84	458	84
5. If this is an amended declaration, [redacted] made on account of prior declarations for this year			
6. Unpaid balance of ESTIMATED Tax (item 3 less the sum of items 4 and 5)		$ 77,000	00
7. Amount paid with this declaration. (Read carefully Instruction 4)		$ 19,250	00

(Cashier's Stamp)

I declare under the penalties of perjury that this declaration has been examined by me and to the best of my knowledge and belief is a true, correct, and complete declaration.

Dated March 17, 1952

(Signature of taxpayer or agent)

(If this is a joint declaration (not made by agent), it must be signed by both husband and wife)

16—62334-2

Defendant Alprin Exhibit FX